

AN ARGUMENT

ON BEHALF OF THE

CITY OF WHEELING

BEFORE THE

COMMITTEE ON ROADS AND INTERNAL NAVIGATION,

UPON

THE MEMORIAL

OF THE

BALTIMORE AND OHIO RAILROAD COMPANY.

BY JAMES S. WHEAT.

RICHMOND:

PRINTED BY SHEPHERD & COLIN.

1845.

THE UNIVERSITY OF PENNSYLVANIA



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ARGUMENT.

I have been deputed by the City of Wheeling, to represent her interests before you, so far as the same are involved in the prayer of the Baltimore and Ohio railroad company, as set forth in their memorial presented to the house of delegates on the second day of the present session, and referred to this committee. That memorial prays "that further time may be allowed them" (the Baltimore and Ohio railroad company) "to extend the Baltimore and Ohio railroad through the state of Virginia, so as to strike the Ohio river at a point not lower than the mouth of the Little Kanawha on the said river, according to the terms of the charter granted in 1827; and for such further aid as may be consistent with the policy of the state, and as the legislature may please to grant."

The City of Wheeling feeling a deep and vital interest in the object of this prayer, has come before the legislature with her remonstrance, praying "that the petition of the Baltimore and Ohio railroad company, presented on the 3d day of December 1844, be rejected; and that said company may be authorized to extend their road through the state of Virginia, so as to strike the Ohio river at the City of Wheeling in the county of Ohio."

Such is the position of the parties to the important question now submitted to you, to the decision of which I am assured your minds will be directed, freed from the influence of any prejudice or foregone conclusion, with only the earnest desire of consulting, under the control of truth and justice, the best interests of the commonwealth.

It is due to myself, and especially to the city, I for the occasion represent, that I should distinctly state that the circumstance which induced my selection, was the comparative familiarity with this subject which I have had opportunities of acquiring, and no other fitness I possess. When I reflect upon the great importance of your decision to the citizens of Wheeling, and the array of talents, learning and official influence combined in opposition, I feel most sensibly my weakness. But when I turn to the subject under consideration, and review the position of the City of Wheeling, impreguably secured by the plighted faith of the company and our own commonwealth from all assaults, my mind is reassured. With that trusting hope and confidence which ever spring from the consciousness of right, I shall go forward in the discharge of the duty imposed upon me, unshaken by the consciousness of my own want of ability—for here at least, right gives might, and unchecked by a fear of the powers of those arrayed against me, for

It is a novel circumstance to find these parties in their present seemingly antagonistic position. I say *seemingly* antagonistic position, for with all proper humility, I venture the opinion that a full investigation of this case will satisfy every impartial mind that the City of Wheeling, in seeking to establish her undoubted rights in this matter, does not place in jeopardy the interests of the great company, with which she has heretofore faithfully maintained so close an alliance. On the contrary, as she has claimed in her memorial, she does not seek to impede the rapid completion of a work, in the success of which she has so great an interest, but in protecting her vested rights, she best protects the interests of the company having that great work in charge. The difference of opinion on this point may be, I think, reasonably attributed to causes foreign to the true interests of the company, which will sufficiently manifest themselves to your notice before the close of this controversy.

Into her present position the City of Wheeling has been most reluctantly forced. Had it not been for the action of the company, which tends to a terminus on the Ohio river other than Wheeling, she would not now have been an appellant to this tribunal of her commonwealth. But being forced here by the act of others, she now humbly but firmly insists that should the legislature of the state deem it proper to adopt any action upon this subject, its enactments shall secure the rights vested in her by its former legislation. A proposition from which there can be no dissent, and it is therefore only necessary to shew that she brings herself within the reach of its strictest application.

I must further premise, that all charges of unworthy or improper selfishness, as directed against the City of Wheeling, are utterly without foundation, however reiterated or however authoritatively announced. If by unworthy and improper selfishness is intended the zealous and untiring industry, with which she has gained the rights she claims, and the watchful vigilance and firm determination with which she defends those rights thus gained, and in all is guilty of no wrong to others, then will I admit the truth of the charge. But this is not surely intended. Such selfishness as I have here described, so far from prejudicing the cause I advocate, would, as in the case of an individual seeking his private rights, commend it to your favour. When I claim that under the acts of the company, sanctioned and confirmed by the legislature, the City of Wheeling has been made the fixed terminus of this road on the Ohio river, I give no just foundation for this charge of unworthy or improper selfishness, because I hold myself prepared to shew, that in the deliberate opinion of the company, maintained through a series of years of the most laboured and minute investigation, Wheeling was justly decided to be the best terminus for the main line of their works on the Ohio river, and this too at a time when the whole range of their present application was open to their choice and selection. Nor when I claim, that so far as Virginia is concerned, this company shall be confined to the route leading through her territory to this terminus, is any foundation given for this charge; because I assert, fearless of successful contradiction, and fully sustained by all the evidence now before us, that this route is not only a

practicable one, unattended by any greater difficulties than the company will encounter on any other route ; but that it is the shortest and best of any of the routes suggested in the present memorial of the company, with perhaps the single exception of the one leading to the mouth of Fishing creek, from which this diverges within a comparatively short distance of its western termination. And even this inferiority is more than compensated by the manifestly greater superiority of Wheeling as a terminus, over all the others spoken of. It is thus we answer the charge of improper selfishness, by insisting we work no injury to others in seeking to secure ourselves from harm. Did we seek our advancement and aggrandizement at the expense of the rights or interests of others, we would justly subject ourselves to this charge. Of this, however, we are clearly guiltless. It is true it has been urged that our opposition may cause the failure of this work. But let not the lively sensibility of the new allies of this company thus impose upon their new born zeal. Let them remember that this great work is not the creation of a day, or the result of the enterprise, energy or skill of any few individuals, however potent in present power and influence. No, it is a work springing from causes far beyond the control of such limited influences. Nothing temporary or local gave it birth, or will control its destiny. It will doubtless be the work of years, and may from time to time, encounter difficulties which shall best test its merits, but its ultimate success is assured by the yearly increasing necessities of our great country. Nature has traced its pathway over the land, by the course of her rivers and mountains. Amid all the struggles of conflicting local and temporary interests, these unchanging influences are silently at work. The utmost energy and highest intellectual ability may be excited to control her decree, but the rushing torrent and the everlasting hills will mock their efforts. There are those now living who shall, with increased speed, securely traverse this iron way, and crossing the Ohio river at Wheeling, shall pass through the centre of the great northwest, visiting in rapid succession the capitals of the great states of Ohio, Indiana and Illinois, and shall only finish the journey of more than a thousand miles from Baltimore, by an arrival at the great commercial metropolis of the west, the City of St. Louis in Missouri. This is not the dream of the visionary or enthusiast. Each day's history of the world's doings in this department of human enterprise but renders this magnificent scheme more certain of accomplishment. Such is the answer of the City of Wheeling to the charge of selfishness.

It is also a novel charge against the people of Wheeling and Ohio county, that they are seeking even to retard, much less defeat a work of internal improvement. Most truly has that city said in her memorial, that "in the history of the legislation of our state, no instance can be found of the opposition of those who truly represented the people of Wheeling to any reasonable proposition for the improvement of the state by any means of communication." That position she will ever be found maintaining, combining with it, a just regard for the interests of all parts of the state, and more especially great caution and prudence in the administration of its financial affairs. With this profession her present position is in no way inconsistent.

Before commencing the direct examination of the question referred to you, permit me respectfully to notice the leading complaint directed against the City of Wheeling, in "the memorial of a number of delegates and senators from Northwestern Virginia, in reply to the memorial of Wheeling, in relation to the application of the Baltimore and Ohio railroad company, for a right of way through this commonwealth." The complaint here noticed, is introduced in this connection, because of its close affinity in origin and design with the charges I have already noticed. Neither can claim any thing more than a remote and indirect connection with the subject, but seem only calculated to induce a prejudice against us, which if successfully used, may blunt the force of our claims and arguments. In noticing this memorial I shall do so only with that respect I sincerely entertain for those who presented it. And whilst I regret the unkind feeling towards the City of Wheeling, so plainly manifested in the keen and polished sarcasm with which it abounds, I am consoled by the reflection, that its shafts must fall harmless, when upon full investigation it is found that the object of the assault is not in the position assumed for her, and that therefore these missiles so potent for harm in themselves have failed from the error of direction. The complaint, to quote the language of the memorial, is that in the memorial of the City of Wheeling, she speaks of a compliance with the prayer of the Baltimore and Ohio railroad company, as "a measure which is commended to your favour, not merely by advantages held out to a *portion* of the citizens of this commonwealth, but avowedly for the protection of the interests of a foreign corporation, city and state."—"They are aware," adds this remonstrance, "that this company has addressed itself to the favour of *a few of the counties of the state*, but they cannot suppose this will be sufficient to induce you to bring such irreparable ruin upon an innocent and unoffending community; one whose fault has been, if fault it be, that they gave their labour, expended their money, and risked their credit upon the confidence they reposed in the acts of the company and the state of Virginia."

So far as these extracts from the remonstrance of the city have been seized upon as the excuse for the memorial, or rather, to give the paper its proper name, the argument, of these delegates and senators, I make no objection. When they concluded to anticipate your decision, and present an argument against us to the house, which could not be answered until sufficient time was afforded for its full effect, the manner of its introduction was of course the proper subject of their own decision. But I must most earnestly protest against the forced and improper comments they have made, upon language they, it may be in mockery, admit must be regarded "not as a flourish of rhetoric, but as a deliberate assertion of fact." And I here repeat what your further investigation will satisfy you is nothing more than the truth, that these things expressed and alluded to, were said "in the spirit of truth and soberness." Give to the counties represented by the delegates signing that memorial all the dignity and importance they justly deserve, and may they not be designated "*a few of the counties of this state*," and their people "*a portion of the citizens of this common-*

wealth," without any disparagement of their dignity and importance? Most assuredly. Where is the offensive sense in the words "that this company has addressed itself to the favour of a few counties of the state," &c.? Does the inference that any improper means were used to secure this favour, justly follow such language? No! On the contrary, the author of that memorial, the committee who approved, and the council of the City of Wheeling who adopted it, never presumed they should encounter here an unjust opposition springing from interested motives. They knew that the true character and extent of the vested rights of that city were misunderstood; that her position with reference to the route and terminus of this work was misconceived; and that she being therefore in the opinion of the people of these counties no longer in the way, the great advantages resulting from the works of this company, had commended it to their favour. But when these same people shall come clearly to understand, that the legislature of our state and the Baltimore and Ohio railroad company have by their solemn acts, and the company by actual contract, made, determined and declared the City of Wheeling the terminus of that road on the Ohio river; that the company and the city have for years acted under this state of things to the great advantage of the former and great loss of the latter, and that the literal fulfilment of this contract is within the power of the company, and in no wise impairs its true interests, I am sure I do not claim too much for their native sense of justice and magnanimity, when I express my firm belief that they would consent to forego the advantages thus held out to them. Nor was the styling the state of Maryland, City of Baltimore and this company, foreign to the legislation of this state, deemed to be in any mode offensive. That they are so, the memorial of the company itself reminds the legislature, and the City of Wheeling makes the same allusion in contrast with the peculiar claim she possesses, as being within the commonwealth's allegiance, to her fostering care and protection. This company, and the City of Baltimore have received, and will ever continue to receive the fostering care and protection of Maryland, and Wheeling reasonably hopes that Virginia will pursue the same judicious course towards those within her allegiance. She has the same generous desire as is professed by the senators and delegates of Northwestern Virginia, to foster and promote every improvement which is calculated to unite in the closest bonds, and by the strongest ties of interest, the several parts of this great confederacy, and she challenges investigation to establish in her action in this or other matters any departure from this sentiment. There are other things in this argument which I shall notice in the proper place, with all the respect which the ability exhibited in its preparation, and the official influence of those who have urged it, so properly and justly commands.

Having thus attempted to correct some of the various erroneous views which have been presented of the position of Wheeling in relation to the Baltimore and Ohio railroad company, I shall proceed at once to the discussion of the right claimed by Wheeling, and which is directly involved in the prayer of the memorial of that company.

The right claimed is, that of being the terminus on the Ohio river of the railroad contemplated by the Baltimore and Ohio railroad company, and which now terminates at Cumberland in the state of Maryland. She establishes her claim in the *first* place, by the acts of the company through a long series of years, from 1828 until 1843; in the *second* place, by the legislative enactments of Maryland and Virginia; and *lastly*, by the express contract subsisting between that city and the Baltimore and Ohio railroad company.

Upon the first point, you will find upon examination, that almost from the origin of the company, certainly from the 1st July 1829, to quote the words of Mr. Jonathan Knight, late chief engineer of the company, "Wheeling was looked to as the terminus of the main stem of the Baltimore and Ohio railroad, whilst a branch should be made to Pittsburg in accordance with the act of Pennsylvania." Their numerous and expensive surveys and locations all tended to that point, and every succeeding year, which in its events rendered more apparent the ability of the company to accomplish this great enterprise, also rendered more certain the termination of their road at Wheeling. Whilst the geographical position of Wheeling with reference to Baltimore and the great west, clearly indicated it as the point of connection with the Ohio river and the kindred works of improvement which should lead throughout the entire length and breadth of the great states of Ohio, Indiana and Illinois, every successive survey but more clearly demonstrated, to quote the language of Mr. Knight, that the route to Wheeling, as shewn by the minute and expensive surveys made in the years 1836 and 1837, is manifestly shorter, cheaper and better, than any which the country more to the south could possibly furnish; and that the persuasion of a number of the delegates and senators from northwestern Virginia, in which they were then joined by the company, that the route to Wheeling through Pennsylvania was incomparably the most feasible one to the Ohio river, was altogether correct.

I will here beg leave to read to you this letter, addressed to me by Mr. Knight, in reply to my note of the 3d instant. Before reading this letter, however, permit me to make another brief allusion to the memorial of a number of delegates and senators from northwestern Virginia. In their memorial I was much pained to find the following paragraph:

"Your memorialists may add, that their apparent indifference to the route of the road grew also in part out of the persuasion, in which they were then joined by the company, that the route to Wheeling *through Pennsylvania* was incomparably the most feasible one to the Ohio river. *How far this persuasion was induced by the fact that the principal engineer of the company resided within five or six miles of the Pennsylvania route*, we do not deem it necessary at this time to enlarge upon; but we state distinctly, that the engineer never did examine the Virginia or southern routes west of Cheat river, but when he reached that stream in his southern examinations, instead of crossing it and extending his explorations towards the Ohio, *he followed the Cheat down into his own state of Pennsylvania again.*"

The charge thus plainly insinuated against Mr. Knight is too obvious to need any explanation—the purpose to be effected is equally apparent. But fortunately for all whom it was designed to injure, the charge is, to use the words of that memorial on another subject, “*contradicted by the current of events, and overthrown by a reference to dates.*” The reconnoissances and surveys which determined the company to adopt the northern route to Wheeling, were made in Virginia by William Howard, United States civil engineer, S. H. Long, brevet Lt. Col. topographical engineers, and William G. M’Neill, Capt. United States topographical engineers, and reported to the company on the 5th April 1828; and in Pennsylvania the routes to the same point were examined by Lieut. Trimble, and reported to the board on the 1st July 1829—Lieut. Trimble having also previously examined the southern or Virginia routes. Upon these reports, and from that time what was called the northern route to Wheeling was always considered by the board as the adopted route. Mr. Knight, who was absent from the country in the employment of the company, did not become the chief engineer until the year 1830. But an examination and analysis of the routes must beyond all doubt with any impartial mind, effectually repel the charge insinuated in the paragraph I have read. And I doubt not after learning the facts to which I have thus briefly alluded, that those delegates and senators from northwestern Virginia, will join me in saying, as I do, with the most sincere respect for them, that the charge is as unjust to Mr. Knight as it is unworthy of the gentlemen who made it. Here is my note to Mr. Knight :

“ RICHMOND, January 3, 1845. ”

“ *Jonathan Knight, Esq.*

“ DEAR SIR,

“ You have doubtless perceived the allusion to you on the 5th page of ‘the memorial of a number of delegates and senators from Northwestern Virginia,’ recently presented to the house of delegates. Will you do me the favour to give me, in answer to this note, a detailed statement of the manner in which Wheeling was ascertained and fixed as the terminus of the Baltimore and Ohio railroad on the Ohio river, with such explanations of your personal agency in that matter, as under the circumstances you may deem right and proper. I wish the information to be used before the committee on roads and internal navigation of the house of delegates of Virginia.

“ Yours, very truly,

“ JAMES S. WHEAT.”

I will now read his answer.

“ RICHMOND, Va., January 7th, 1845.

“ *To James S. Wheat, Esquire :*

“ In reply to your note of 3d instant, I have to say, that at a very early date of their operations, the Baltimore and Ohio

railroad company, looked upon Wheeling as the most suitable point on the Ohio river at which to terminate their road.

“That company, as you are aware, was incorporated by the state of Maryland by act of the 28th February 1827, ‘with all the rights and powers necessary to the construction and repair of a railroad from the City of Baltimore to some suitable point on the Ohio river, to be by them determined;’ which act of incorporation was assented to and confirmed by an act of the legislature of Virginia, passed the 8th March 1827, and providing ‘that the said road shall not strike the Ohio at a point lower than the mouth of the Little Kanawha on said river.’

“In pursuance of these acts, the company was organized, and without loss of time, applied to the proper department at Washington for the services of the United States topographical engineers, to make the necessary preliminary examinations and surveys of the country within the limits proposed for the work; allusion to which is made in the first annual report of the president and directors, dated the 1st October 1827, as follows:

“ ‘The government of the United States, justly appreciating the importance of this enterprise, have extended to it a most liberal patronage. Several able and efficient members of the topographical corps, have been detached to the service of the company. These officers have examined various routes from the City of Baltimore to the valley of the Potomac, and along that ravine as far as Cumberland. They are now engaged in a general reconnoissance of the country between the Potomac and Ohio rivers, and are expected to return in a few weeks prepared to lay before the board the result of their labours.’

“These reconnoissances, extending not only from the southern line of Pennsylvania, and the mouth of Fish creek on the Ohio, to the mouth of the Little Kanawha, (the company’s southern limit,) but likewise to the Great Kanawha, were reported upon under date of the 5th April 1828, by William Howard, United States civil engineer; S. H. Long, topographical engineer, brevet lieutenant colonel; and William G. M’Neill, captain United States topographical engineers.

“A very thorough examination from Cumberland westward, was made by the officers above named, aided by F. Harrison, assistant engineer, and by lieutenants Barney, Trimble and Dillahunt. All of the routes, except that to the Great Kanawha, occupied the same ground up the north branch of Potomac, Savage river and Crabtree creek, to the summit ground dividing the Potomac and Youghiogheny rivers.

“Thence the more northern line passed to the Duncard bottom on Cheat river, by way of the ravines of the Little Youghiogheny, Snowy Creek, &c. where two routes diverged; the one passing down the ravine of Cheat river to the Monongahela, and by Duncard creek and Fish creek to the Ohio river, at the mouth of the latter named stream, small portions of this route falling within the southern border of Pennsylvania; the other crossing the mountainous region west of Cheat river, intersected the Monongahela at or a few miles below the mouth of the Tygart’s valley river; thence by the ravine of Buffalo creek

to the summit, and by Fish creek, and also by Fishing creek to the Ohio river; of which, the latter was preferred.

“The more southern route, principally examined by Lt. Trimble, extended from the head of Crabtree creek, in a southwestern direction along the northwestern slope of the Great Backbone mountain, to the head of Horseshoe run, and by the slopes and ravine of the latter, to Cheat river: Thence ascending Clover run to, and crossing Laurel hill, the route descended to the Tygart's valley river. Here, again, two lines diverge: The one passing through Milford on the Monongahela, thence over the summit, and down a branch of Middle island creek, and thence over another summit to the south fork of Hughes's river, and down by the latter to the Little Kanawha, and by it to the Ohio river, at an estimated distance from Cumberland, of $223\frac{1}{4}$ miles.

“The other line leaves the Tygart's valley river by the ravine of Fink's run, passes to Weston, on the Monongahela, and thence, ascending Poke creek, and crossing the summit, descends to the Ohio river by Leading creek and the Little Kanawha: a distance from Cumberland, by this route, of 243 miles.

“Other routes were likewise examined by Clarksburg, and occupying the ravines of Middle island creek, the north fork of Hughes's river, and of other minor streams; and reaching the Ohio river at the mouth of Middle Island, at Sistersville, and at other points.

“In concluding their report upon these reconnoissances, the board of engineers above named, remark, that west of Williamsport, ‘the railroad would, in general, pursue the valley of the Potomac to the town of Cumberland, or even as far as Savage river, if it shall be decided to ascend the Alleghany mountain through the valley of Crabtree creek in preference to prolonging the road in the direction of Wills' creek and Casselman's river to the Youghiogheny. But the recent privileges granted to the company by the state of Pennsylvania, render it altogether expedient, if not absolutely necessary, that minute investigations and actual surveys should precede any decision respecting the direction of the road beyond the town of Cumberland.

“‘We are aware, however, from our present knowledge of the country,* that serious difficulties may be avoided by entering the territory of Pennsylvania; and that, after we shall have passed the Laurel hill, by the valley of the Youghiogheny, we may, from the favourable direction of different tributaries to the Monongahela and Ohio rivers, prolong the railroad to a point on the latter river, as far south as the Pennsylvania line, or even to the mouth of the Little Kanawha, with comparative facility; or, if it shall be deemed preferable, we may continue down the valley of the Youghiogheny to Pittsburg, or, on the supposition of diverging from the Youghiogheny beyond the Laurel hill, and crossing the peninsula between the Monongahela and Ohio, the valley of the Monongahela will present another route for a lateral branch to Pittsburg.’

* Obtained principally through the United States surveys and levels made in the years 1824, 1825 and 1826, for the projected Chesapeake and Ohio canal.

“The privileges above alluded to by the board of engineers, were granted by the state of Pennsylvania, in a law passed in February 1828, assenting to the Maryland charter aforesaid, with certain conditions, one of which was, that ‘it shall be the duty of the company in case the railroad aforesaid, made in this commonwealth, in pursuance of this act, shall not terminate at the Ohio river in the vicinity of Pittsburg, to construct a lateral railroad, simultaneously, on the same principles and plans of the main railroad, and which shall connect the City of Pittsburg with the main railroad.’

“Adverting to this act of Pennsylvania, the board of president and directors, in their annual report to the stockholders, in October 1828, remark, that ‘the charter granted by the legislature of Pennsylvania at its last session, by which the power of constructing the railroad through that state, is secured to the company with very liberal and satisfactory privileges and immunities, promises to afford important facilities.’

“Accordingly in December 1828, Lt. Trimble who had previously made the reconnoissances to the mouth of the Little Kanawha, was ordered to make examinations of the country from Cumberland to the Ohio river, through Pennsylvania; and his report was rendered on the 1st July 1829; shewing the perfect practicability and decidedly superior relative advantages of the routes for the railroad from Pittsburg, and from Wheeling by way of Brownsville, to Cumberland on the Potomac; and awarding to them a preference over the routes previously examined from the Little Kanawha and other points below. In these examinations I had no part; for although I entered the company’s service in the spring of 1828, yet these last investigations were ordered and made during my absence in Europe on business of the company.

“From this time, Wheeling was looked to as the terminus of the main stem of the Baltimore and Ohio railroad, whilst a branch should be made to Pittsburg, in accordance with the act of Pennsylvania.

“Litigation, however, between this company and the Chesapeake and Ohio canal company concerning the right of way along the Potomac, retarded the operations of the former; and it was not until the year 1835, that any further movement was made in the investigations west of Cumberland. In that year, as the chief engineer of the company, which office I had held from the commencement of the year 1830, I was directed by Philip E. Thomas, then president of the company, to reconnoitre the country between Cumberland and Wheeling and Pittsburg, with a view to ascertain its adaptation to a railroad, upon which locomotive steam engines should be the power to be used throughout, and not inclined planes and stationary engines to pass the summits as had been contemplated in all previous examinations. That reconnoissance resulted in my report of the 30th September 1835, published by the company at the close of that year, in which it was shewn that the routes from Cumberland over the Alleghany to Wheeling, and to Pittsburg, could be graduated in all their parts so as to permit an economical use of locomotive steam engines in their then state of improvement. And this report was the preparatory step and guide

to the institution and carrying on of the minute and expensive instrumental surveys from near Harper's Ferry to Cumberland, and thence to Wheeling and Pittsburg, made in the two succeeding years, 1836 and 1837; the route to Wheeling, thus surveyed, being as evinced by the reconnoissances, manifestly shorter, cheaper and better than any which the country more to the south could possibly furnish.

"And further, to shew that this preference was not blindly made, but resulted solely from the merits attached to the route, let me add, that in consequence of highly plausible representations of interested parties, who had in view the founding of a city on the Ohio river at the flats of Grave creek, only twelve miles below Wheeling, and therefore to be reached without abandoning the advantages of the route in Pennsylvania, I was directed to include in my reconnoissances, an examination to this point also. The result was, that an additional high summit had to be surmounted without lessening the length of the road or producing any counteracting advantage.

"Nor did the topography of the country immediately west of the point proposed offer facilities for the approach or departure of a similar work in that direction, in any way to compare with those connected with Wheeling: and thus the decided advantages and preference previously known and entertained in favour of Wheeling as the terminus, were fully confirmed; and consequently, no instrumental surveys were ordered to any point below Wheeling.

"The surveys of 1836 and 1837, and the estimates based upon them, of the several routes, were reported upon in the early part of the year 1838; the route to Wheeling, from Cumberland measuring 194 miles. Subsequently, however, the route across the Savage mountain by the ravine of Jennings's run and Albright's summit, was adopted, which curtailed 9 miles of the distance, and by revised surveys, 2 miles on Wheeling creek, 2 miles by adopting Day's summit, 1 mile on Ten Mile creek, and 3 miles on the Youghiogheny river, were saved: by which means the length of the adopted route from Cumberland to Wheeling was reduced to 177 miles, located throughout for the running of locomotive engines.

"From Cumberland to Wheeling, the measured distance is 177 miles.

"The total of all the ascents, westward, amount to	-	2487 feet.
Do. descents, do. do.	-	2486 "

Total,	-	-	-	-	4973 "
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"From Cumberland to Parkersburg, by reconnoissance, 223 miles.

"And according to Lt. Trimble's report,

"The total of ascents, westward, amount to	-	-	3842 feet.
Do. descents, do do.	-	-	3881 "

Total,	-	-	-	-	7723 "
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"From Cumberland to the mouth of Fishing creek the distance by reconnoissance is $186\frac{1}{4}$ miles.

"The total estimate of ascents, westward, is	-	-	2778 feet.
"And of descents in the same direction,	-	-	2806 "
			<hr/>
Total,	-	-	5584 "
			<hr/>

"From Cumberland to Wheeling, through Virginia, by reconnoissance, the distance is estimated to be 205 miles.

"And the ascents, westward, estimated at	-	-	3421 feet.
"And the descents, the same amount,	-	-	3421 "
			<hr/>
Total,	-	-	6842 "
			<hr/>

"But reducing three of the summits, 30, 40, and 25 feet respectively, in order to bring the grade down to 40 feet to the mile, as recommended in the report, then the total ascents upon this route to Wheeling, is 3326 feet, and the total descents likewise 3326 feet, total 6652. Being 1068 feet *more* than on the Fishing creek route; 1071 feet *less* than upon the route to Parkersburg, as given by Lt. Trimble, and 1681 feet *more* than upon the surveyed route through Pennsylvania.

"Without dilating upon the probable relative cost of constructing or working the road upon the several routes above mentioned, which cannot be done with precision in the absence of data to result from instrumental admeasurements, I must beg leave to add my firm conviction that the company's surveyed route will be far the cheapest to construct and to work. And it will be obvious that 'the persuasion' of 'a number of delegates and senators from Northwestern Virginia, in which they were then joined by the company, that the route to Wheeling *through Pennsylvania* was incomparably the most feasible one to the Ohio river,' was altogether correct; and that the query on page 5 of their printed memorial of 'how far this persuasion was induced by the fact that the principal engineer of the company resided within five or six miles of the Pennsylvania route,' has no base for its support apart from the mind that dictated it.

"And it was unnecessary for him to cross the Cheat river hills to look for a route to Wheeling, since the examinations previously made, demonstrated decisively, the superiority of the route through Pennsylvania, whose assent the company then had.

"In regard to the branch to Pittsburg, it may be remarked that by the lines surveyed, its length might either be 60 miles or 53 miles, according to the point at which the deflection from the main stem should take place. And I will here add, what I have on a former occasion, but since the surveying parties were withdrawn from the field, communicated, namely, that, as the company's then chief engineer, it had been my intention in case the parties could have been allowed to remain longer in the field in 1838 (from which they were suddenly withdrawn in consequence, as was understood, of the revulsion in the money market), to have modified the location of the main stem of the road, without lengthening it, but so as to reduce the length of the Pittsburg branch, to about 45 miles. Thus the total length of railroad from Cumberland to Wheeling and to Pittsburg, united, would be only 222

miles ; being as short as the single route to Parkersburg, should actual measurements upon the latter, verify the approximate estimates of a reconnoissance.

“It will be seen, therefore, that in the face of all the facts of the case, as they were known at the time, and which subsequent investigations have tended to confirm, the company and its officers were fully justified in deciding to go to Wheeling ; and in declaring, as they did, to the legislature of Virginia, in 1838, their desire to make that city the terminus of their road on the Ohio river, and which was responded to and confirmed by Virginia, in her act of the 2d April 1838.

“The act of 1839, however, of the legislature of Pennsylvania, in prolonging the time to make the road in that state, contained provisions to which the company have objected ; and that act, I regret to say, has not been accepted : consequently, the company, according to their late memorial, consider themselves excluded from the territory of Pennsylvania ; that is, from the shortest and the best route to the Ohio river. At the same time, a practicable route has been shewn to exist, by which the railroad can be made to Wheeling without touching upon the soil of Pennsylvania.

“Very respectfully,

“J. KNIGHT.”

I have read this letter at this time chiefly to shew that so early as July 1829, Wheeling was looked to by this company as the terminus of the main line of their works on the Ohio river. But it is not from this letter alone that Wheeling establishes this important fact. Prior to the making the instrumental surveys, which induced the final location of the road, Mr. Philip E. Thomas, then president of the Baltimore and Ohio railroad company, in a letter replying to the communication of a committee appointed by a public meeting of the citizens of Wellsburg in Brooke county, requesting that examinations of a route to that place might be made, distinctly announced that the company had determined to construct their road to Wheeling as the terminus of the main line on the Ohio river. Indeed, after the preliminary reconnoissances and surveys made by the company through the agency of the United States engineers during the years 1827, '28 and '29, all their examinations, surveys and locations subsequently made at a cost of more than a hundred thousand dollars, west of Cumberland, were so made with reference to Pittsburg and Wheeling. And when the company came before the legislature of Virginia at the session of 1837-8, they based their appeal for a renewal of their charter and for aid from the state, to a great extent, upon the established fact that Wheeling was the ascertained terminus of the main line of their work on the Ohio river. For the purpose of shewing this fact, and for reasons I shall explain hereafter, I beg leave to read you extracts from a pamphlet entitled “Documents submitted by the Baltimore and Ohio Railroad Company, in behalf of their application to the Legislature of Virginia. Richmond : 1838.” This pamphlet was prepared and issued by a committee from the board of directors of this company, with the knowledge and approval of Mr. M’Lane.

“The road terminates eastwardly in the City of Baltimore: it is designed, if the proper aid can be obtained, to terminate westwardly in the City of Wheeling; and it is clear, in that event, that the benefits to be conferred upon either extremity will be mutually felt by the two cities, and both will equally prosper by its operation on their commerce; whilst the country lying between, of which the greater portion is included within the limits of Virginia, will derive from it every facility which such a road, under the most favourable circumstances, is calculated to confer upon any region through which it may pass;—confessedly, and by experience proved to be of great value wherever it has been tested. In these points of view, it is obvious that the Baltimore and Ohio railroad is entitled to be considered a work as much for the improvement of the state of Virginia as it is of Maryland; and if the project of connecting Wheeling and Baltimore were now, for the first time, submitted to the two states, it would possess equal claims upon the patronage and assistance of both. It is nevertheless to be achieved, even under the most favourable expectations of aid from the state of Virginia, at the expense of not more than fourteen hundred thousand dollars from her, whilst ten or eleven millions are contributed by the other interests concerned.

“This scheme acquires a claim to the friendly consideration of the state of Virginia from another argument, which is entitled to great weight. It is undoubtedly an object of paramount concern to this state to promote the growth and prosperity of her thriving *western City of Wheeling*. By position and commercial connections, this city is destined to become a principal seat of western trade, and cannot fail, under a wise encouragement, to grow into great importance in the domestic policy of this state. Her means for the accomplishment of this end are manifestly, in many most important particulars, superior to those of Pittsburg; and yet Pittsburg, by the energetic and sagacious policy of Pennsylvania, has already been elevated into the rank of a great western metropolis, and will long continue to be fostered by that state as one of the most valuable of her possessions. To attract towards this city the commerce of the Ohio and its tributaries, and to distribute that commerce for the benefit of the state, *Pennsylvania* has expended nearly twenty millions of capital; and she is now reaping the fruit of her public spirited munificence in her extended connexions through this point with the lakes and the rapidly populating territories of the far west. Various railroads and canals are now in a state of progression, all tending to add to the resources, wealth and growth of Pittsburg, and at that point to unite with the vast and splendid works of the state, whose early foresight and vigour have already brought her the harvest of an incalculable trade.

“A just appreciation by Virginia of the value of this policy, might enable her to divert a large portion of this trade into her own City of Wheeling, and to distribute it to the manifest profit of the whole western and northern sections of her own population. That in such a distribution of it, and by a liberal system of public improvement, calculated to promote and increase it, Baltimore would receive a direct benefit, will not, it is presumed, be allowed to weigh as an argument

against the undertaking ; especially when, without reference to other persuasions, it is considered that Baltimore, a southern city, is allied to this state by many ties of affinity, community of interest and social relation ; and also, that the endeavour, on the other hand, is to counteract the policy of a rival state, whose effort heretofore has been, successfully, and will, until arrested in the manner proposed, continue to be, to divert this trade to a point still more remote from Virginia, by a line of communication conferring no benefit upon any portion of her people ; but, on the contrary, lessening that trade which now finds its access to the Atlantic through her territory. It is not a question whether Virginia can attract this trade to her own capital—that is manifestly impossible—but whether she can retain it in her own western city, and convey it from that city to the sea coast, by a line of transportation, which, for more than one half of its extent, passes through her domain—an effort altogether within her power by the means proposed. Pittsburg and Wheeling are, in every sense, *rivals* in trade, urged forward to their utmost endeavour by an eager spirit of emulation. The first has been pushed onward in her career by the stupendous efforts of a powerful state, which has contributed to open every resource to her enjoyment : the latter, more advantageously seated, and enjoying by nature many elements of superior success over her competitor, has yet to receive the aid of her own state, which is equally powerful in intrinsic but undeveloped resource, and which is now presented with a conspicuous occasion to signalize her beneficence in a liberal support of her growing city of the west, by contributing to that great enterprise, which, in a brief period, is to put this city upon an equal footing with her rival.”

In connection with this point I also beg leave to read some extracts from the annual reports of the president and directors of this company to the stockholders. Being unable to obtain copies of these annual reports earlier than the 10th, or the one submitted on the 8th October 1836, I shall commence with that one. In this report Mr. Pres’t Patterson says :

“At the December session of the legislature of Maryland 1835, the board of directors memorialized that body, praying for aid to complete the road to Pittsburg and Wheeling ; and at the same time a similar application was presented to the mayor and city council of Baltimore.”

In pursuance of these applications, the state of Maryland passed the law of June 1836, subscribing \$3,000,000 to the stock of the company, on certain conditions in the act mentioned, and the City of Baltimore also agreed to subscribe three millions of dollars for the construction of the road in an unbroken line from Harper’s Ferry westward.

In the twelfth annual report submitted to the stockholders by Mr. President M’Lane, on the 13th December 1838, in assigning the reasons which had induced the company to accept the Virginia law of 1838, he uses the following language, quoted in the memorial of the

City of Wheeling, and found on the 9th page of the printed copy of the report. That law "made it an express condition that the road should pass into Virginia at Harper's Ferry; be thence constructed through that state to about five and a half miles below Cumberland, and that Wheeling should be made one of the termini. According to this condition, and which was the best it was possible to obtain, the company was not only required to pass into Virginia at Harper's Ferry, but was also obliged to abandon altogether the extension of the road to Wheeling, or to leave the state of Maryland for nearly the entire distance between Harper's Ferry and Cumberland." Upon the following page of the same report, we find the following paragraph: "*The City of Wheeling has always been regarded as an almost indispensable termination of the road; and as it is understood, formed a principal inducement with the state of Maryland and the City of Baltimore in contributing their aid in the completion of the work. Indeed without a reliance upon the trade from that point, it is not to be supposed that the City*" (of Baltimore) "*could have been prevailed upon to afford the liberal assistance which the company has received from that quarter. In fact, therefore, it could not be expected that an object so essential to the success of the enterprise would be relinquished.*"

In the sixteenth annual report, submitted by Mr. President M'Lane to the stockholders, on the second Monday of October 1842, he says: "*The state of Virginia permits the occupation of any part of her territory in consideration that the road shall be made to Wheeling, and has agreed to pay \$1,058,000, or the one fifth of the estimated cost of construction from Harper's Ferry to Cumberland, only in that event.*"

I have quoted these documents, and have perhaps with unwise tediousness taxed your attention, for the purpose of demonstrating that the route which was surveyed in 1836-7, and adopted by the company, leading to Wheeling through Pennsylvania, was so adopted because it was the shortest, cheapest, and in every way the best route connecting Cumberland on the Potomac with Wheeling on the Ohio. That for obvious reasons of great importance, Wheeling was the terminus desired by the company, and that to secure that terminus, the company sought the best route within the control of their charter—or in other words, Wheeling as the desired terminus, exercised a materially controlling influence in the selection of the route, and that the advantages of the route, decisive as they were, did not, of themselves, carry the road to Wheeling as its terminus. It must here be borne in mind, that during all the time of the explorations and surveys of the company in selecting their route to Wheeling, which Mr. M'Lane informs us "has always been regarded as an almost indispensable termination of the road," the company had the right of way through Pennsylvania, by virtue of the act of 1828, which the company approved and accepted, and which did not expire until February 1843. Being satisfied from all their previous examinations, extended south in Virginia, even to the Great Kanawha, that the route through Pennsylvania was the best for every reason, there was no possible inducement for seeking a connection with Wheeling through Virginia alone. Therefore it was, that in 1836-7 the examinations or surveys in Virginia were not extended west-

ward beyond the Cheat river, which conducted to the valley of Monongahela river, and so on to the preferred line to Wheeling. For the same reason no examination was made of the connection between the Monongahela river, by the way of Buffaloe creek, and the City of Wheeling, around the southwest corner of Pennsylvania. In the absence of all examination either by reconnoissance or survey, all opinions given by Mr. Knight or other engineers of the company, must have been based entirely upon the general knowledge of the character of the country traversed by all the southern routes, and the courses and directions of the creeks and other streams: and this I am informed is the truth of the case. Here also may be found ample reasons for the course taken by the company in their surveys, without our being reminded of the place of residence of Mr. Knight, late chief engineer of the company.

I now beg leave to read the memorial of the company presented to the legislature of this state, at the December session 1842.

“To the honourable the General Assembly of the State of Virginia.

“The Baltimore and Ohio railroad company respectfully represent :

“That by the act of the state of Virginia, passed the second of April eighteen hundred and thirty-eight, with a view of removing any doubt of the permanence of the charter originally granted by your honourable body to this company, allowed the company the further time until the fourth of July eighteen hundred and forty-three, for the completion of that portion of the improvement to be constructed within the commonwealth of Virginia.

“That previous to the said act the company was under no obligation to construct any portion of their improvement within the state of Virginia, than that which would extend from Wheeling to the Pennsylvania line, a distance of twenty-one miles.

“By the said act of the second of April eighteen hundred and thirty-eight, it was made the duty of the company to locate their improvement west of Harper’s Ferry, through the territory of Virginia, to within about six miles of Cumberland, and from thence through Cumberland to the City of Wheeling; thus requiring one hundred and eleven instead of twenty-one miles to be made through that commonwealth.

“The said act further required that the City of Wheeling shall subscribe one million of dollars to the capital stock of said company, and that the two fifths of the estimated cost of the work through the territory of Virginia from Harper’s Ferry to within six miles of Cumberland, which the Board of public works was authorized to subscribe, should not be paid until six months after the completion of the improvement, according to the foregoing location to the City of Wheeling.

“Your memorialists further represent that on the thirty-first of May eighteen hundred and thirty-eight, the City of Wheeling duly subscribed the sum of one million of dollars in pursuance of the said law, to be paid in the bonds of the said city, bearing interest of five per cent. per annum, and reimbursable in fifty years from the date thereof.

“That after the date of this subscription, the means of the Baltimore and Ohio railroad company to prosecute their improvement consisted of the subscription of the state of Maryland of \$3,200,000 in the five per cent. sterling bonds of the state ; of the subscription by the City of Baltimore of \$3,000,000 ; of the subscription aforesaid of \$1,000,000 by the City of Wheeling, and of the engagements by the state of Virginia, pursuant to the said act of the second of April eighteen hundred and thirty-eight, and of a previous act of the second of March 1837, amounting together to the sum of \$1,360,420.

“The subscription of \$3,000,000 by the City of *Baltimore*, was payable at such times and in such instalments, not exceeding \$1,000,000 in any one year, as the company should think proper to demand it ; but upon the condition that the amount should be applied to the prosecution of the work in an unbroken line from Harper’s Ferry to Cumberland.

“It is doubtless known to your honourable body, that very soon after the enactment of the law of the second of April 1838, the business and credit of the country became greatly shaken and embarrassed ; that the scarcity of money which has ever since been so severely felt in all the operations of the community, exerted a fatal influence upon all public enterprises ; that public securities generally became unsaleable unless at ruinous sacrifices, and that most of the public improvements in all parts of the United States were either abandoned or indefinitely suspended.

“In the midst of these discouragements and positive disadvantages, the Baltimore and Ohio railroad company did not relax their exertions to press forward the work committed to their management, and were enabled by great efforts so to manage their affairs as to render available at its par value the subscription by the City of Baltimore for the prosecution of the road in conformity with the terms of the subscription and the location prescribed by the act of Virginia ; and as early as the month of November last, actually finished the road and put it into full operation from Harper’s Ferry to Cumberland, by the aid of the subscription of the City of Baltimore, and a small portion of the company’s annual revenue.

“Your memorialists further represent, however, that unless they could have sacrificed at ruinous prices the bonds of the state of Maryland, or those of the City of Wheeling, it was altogether impracticable to have finished within the time allowed by your act of the 2d of April 1838, the distance of twenty-one miles from the City of Wheeling, through the commonwealth of Virginia, to the Pennsylvania line.

“They might, it is true, by submitting to the sacrifice of the securities in their possession, have literally complied with the limitation in the act of Virginia of the 2d of April 1838, and have thereby rendered their charter permanent. They would at the same time have used such advantage at a waste of their funds to an amount not short of half a million of dollars ; and they would moreover have incurred the additional and very serious expense of working a broken line of road, which would have required separate and distinct sets of machinery and working power at each end.

“Under these circumstances, your memorialists supposed they would best consult the interests of the stockholders, the wise and liberal policy of the commonwealth of Virginia, and the ultimate objects of this great enterprise, by abstaining from any sacrifice of the securities in their hands, and by husbanding their resources until more propitious times, when, if ever, they may be employed in their full amount to the prosecution of the work in a continuous line from Cumberland to Wheeling.

“Your memorialists moreover ventured to suppose that the limitation in the act of Virginia would at all times be treated as subordinate to the great objects of the charter; being intended merely to excite the company to a proper spirit of diligence, and to the employment of all reasonable means for the attainment of the end, and not to hasten the extension of a part of the work only, by means and at sacrifices which would be fatal to the completion of the entire enterprise, or to compel the company, in order to reach the Ohio river, to construct a road through another state.

“Your memorialists therefore respectfully ask that your honourable body will extend the period for completing the improvement through the territory of Virginia.

“By order of the board.

“LOUIS M'LANE, *Pres't*
“Of the Baltimore and Ohio R. R. Company.”

I shall here leave this part of the subject for the present, with the hope, that apart from the frank and candid admissions of Mr. President M'Lane in his argument, I have succeeded in satisfying you, that from 1829 at least, until 1843, the City of Wheeling was looked to as the terminus of this road on the Ohio river within this state, as shewn by all the acts of the company.

In the *second* place I have said that Wheeling establishes her claim by the legislative enactments of Maryland and Virginia. This I shall now endeavour to demonstrate.

Whilst I shall maintain, that the establishment of Wheeling as a western terminus of this road, was the effect of the enactments of these two states, so far as it required or needed the sanction of legislative enactment, I must not be understood as maintaining that this effect was produced by the laws of each state in the same mode; the law of Maryland operated on this question by indirection, the law of Virginia by direct and positive provision.

In discussing this part of my subject, I shall not stop to give a detailed account of the many laws that have been passed by the states of Maryland, Pennsylvania and Virginia, in relation to this company. For that detail I must refer you to the memorial of the City of Wheeling, read to you at a former sitting. I shall at this time quote only such parts of those laws as shall become necessary for the maintenance of the position I have assumed. For reference, I shall use a compilation of the “laws, ordinances and documents, relating to the Baltimore and Ohio railroad company,” published under the authority of that company in 1840.

The first act to which I shall call your attention, is the act passed by Maryland on the 4th June 1836, entitled "an act for the promotion of internal improvements." The first section provides for a subscription on behalf of that state to the capital stock of the Baltimore and Ohio railroad company of \$3,000,000, upon certain conditions in the act mentioned; the act also provided for the subsequent payment of the said subscription, upon certain other conditions and in the mode therein prescribed. This subscription was made in September 1836, but the payment could not then be made, for reasons which will be explained. The fifth section required, that before the treasurer should make any payment on account of the said subscription, he should be satisfied by the certificate of the majority of the state directors of the company, verified by their oaths or affirmations, that the company had funds sufficient to make their road from the Ohio river by way of and through Cumberland, Hagerstown and Boonsborough, to its track near Harper's Ferry. These funds were to be made up solely of the subscriptions of Baltimore, Pittsburg and Wheeling, with the \$3,000,000 mentioned in this act. The act provided for the payment of this subscription in money, and to enable the treasurer to procure the funds for that purpose, and the payment of the other subscriptions mentioned in the act, it directed the delivery of state bonds, redeemable in fifty years, bearing six per cent. interest, to the amount of \$8,000,000, to three commissioners, who should proceed to Europe for the purpose of selling them. These bonds were so issued, and the commissioners proceeded to Europe upon their mission, but were compelled to return without success. After the passage of this law, the company directed the necessary surveys and estimates to be made, to enable them to ascertain the cost of the road from Harper's Ferry to the Ohio river, as described. The engineers submitted their final report of their surveys and estimates, with that view, on the 14th February 1838. From this report it appeared, that in addition to the subscriptions of Maryland and the City of Baltimore, amounting to \$6,000,000, there would be required from the City of Wheeling an additional million of dollars, (every effort to induce a subscription from Pittsburg having utterly failed,) in order to make up the amount of the estimates, and thus enable the company under the 5th section of the law of Maryland of 1836, to obtain the payment of the \$3,000,000, subscribed in September 1836 by the treasurer of the western shore of Maryland. What was the intention of the legislature of Maryland in restricting the sources from which the company should obtain the residue of the subscriptions, over and above the state's subscription, necessary to make up this amount to the Cities of Baltimore, Pittsburg and Wheeling, I am at a loss to conjecture with any certainty.

My own conclusion has been, that the legislature had determined to secure the completion of this work in an unbroken line from Baltimore to Wheeling; to do so by this subscription of three millions of dollars, after the residue of the necessary amount should be obtained by the company from other sources; and in order to guide and control the treasurer of the western shore of Maryland, in the exercise of the important discretion vested in him, they specifically named the

different sources, [doubtless upon the suggestion of the company,] from which these subscriptions should be derived. It is also further apparent that these subscriptions of stock should be absolute, certain and unconditional, otherwise the end to be gained would be defeated. Wheeling was named, because that point was the fixed and established terminus of the main line on the Ohio river, and by the company always "regarded as an almost indispensable termination of the road." Pittsburg was named, because the best route to Wheeling lead the company into Pennsylvania, and in that event the law of Pennsylvania and the interests of the company required the lateral road to Pittsburg. The direct interest of Baltimore, so identified with the company, of course suggested her and insured her assent. Hence I have reasonably argued, that this legislation of Maryland not only recognized and approved the former action of the company in fixing the terminus at Wheeling, but placed the company in a position which enabled her to dictate and obtain the subscription from Wheeling in the manner in which it was afterwards obtained; on the one hand, by satisfying that city of the certain success of the enterprise if she complied; and on the other hand, by threatening her, that in the event of her refusal, the company would abandon Virginia altogether, and by occupying the territory of Maryland and Pennsylvania alone, give to Pittsburg, her ancient rival, that preponderating influence which should overshadow and crush her forever.

Leaving the legislation of Maryland for the present, I now pass to the act of Virginia of 2d April 1838. With this law you are all, doubtless, familiar. But as it is of much importance, I shall detain you long enough to read the only sections pertinent to the present investigation; they are the 1st, 2d and 6th:

"1. *Be it enacted by the general assembly*, That the Board of public works be and are hereby authorized and instructed to subscribe to the capital stock of the Baltimore and Ohio railroad company to the amount of one million fifty-eight thousand four hundred and twenty dollars, being two-fifths of the estimated cost of constructing the railroad of said company through the territory of this state, between Harper's Ferry and Cumberland, in the state of Maryland: *Provided*, That the said sum shall not be paid until six months after the said company shall have certified and proved to the satisfaction of said Board of public works, that the said road from Harper's Ferry, west, through the territory of this state, to within about six miles of Cumberland, and from thence through Cumberland to the City of Wheeling in the county of Ohio, has been actually completed and in operation with a single track: *Provided also*, That before the said subscription on behalf of this state as aforesaid shall be paid, the City of Wheeling and the inhabitants of the county of Ohio, shall subscribe the amount of one million of dollars to the capital stock of the said company, and prove to the satisfaction of the Board of public works, that the said subscription has been actually paid: *And provided further*, That from the date of the aforesaid subscription by the Board of public works, the state of Virginia shall be entitled to two directors in

the said railroad company, to be appointed by said board, or in such other manner as the general assembly may direct: *Provided further*, That the said subscription shall be made on the same terms, in regard to the guarantee of six per cent., with the subscription of three millions made by the state of Maryland, in an act passed in June eighteen hundred and thirty-six.

"2. *Be it further enacted*, That upon the said railroad company making known to the Board of public works, by a proper instrument in writing to that end, their assent to the terms and conditions above prescribed, and by complying with such parts thereof as are herein required to be complied with, the said board shall make the said subscription in accordance with the authority hereinbefore given.

"6. *Be it further enacted*, That the Baltimore and Ohio railroad company be and are hereby allowed the further time until the fourth day of July, eighteen hundred and forty-three, for the completion of that portion of their improvement to be constructed within this commonwealth: *Provided*, The said company shall accept the provisions of this act, and locate their improvement accordingly."

It had never been supposed by any one, that the slightest difficulty would be found in the interpretation of this law. In order to gain the favour of the legislature of Virginia, the company made their proposition so definite and explicit, in the very words of the law, and in the arguments put into the mouths of its friends. In ascertaining what is the meaning of a law, our best guide is the intention of the legislature, so far as that intention can be clearly ascertained. Now what was the intention of the legislature in this instance? To enable this company to complete their road to the Ohio river at Wheeling, *and no where else*, within this state; entering the territory of this state at Harper's Ferry and continuing therein until it should reach to within about six miles of Cumberland, and from thence through Cumberland to the City of Wheeling in the county of Ohio. And how did the legislature propose to enable the company so to do? By subscribing \$1,058,420 to the stock of the company, and compelling the City of Wheeling to subscribe to the stock of said company \$1,000,000. How did they propose compelling the company to do it? By making the subscription of \$1,058,420, and the extension of their charter, both expressly dependent upon their successful performance of what the company had undertaken. For these clauses of the act read thus: "*Provided*, That the said sum shall not be paid until six months after the said company shall have certified and proved to the satisfaction of said Board of public works, that the said road from Harper's Ferry, west, through the territory of this state, to within about six miles of Cumberland, and from thence through Cumberland to the City of Wheeling in the county of Ohio, has been actually completed and in operation with a single track."

And the sixth section which extends the charter of the company to the 4th July 1843, does so upon this express condition: "*Provided*, The said company shall accept the provisions of this act, and locate their improvement accordingly."

But it further appears that the whole operation of the act depended upon the determination of Wheeling with reference to the subscription of \$1,000,000 required of her. For this was a precedent condition to the state's subscription, and the acceptance of the state's subscription with the provisoes annexed, was made essential to give effect to the law by the last clause of the sixth section. For this most important view of this part of the question, I am indebted to Mr. President M'Lane, an authority which I am sure will not be questioned by our opponents. I will beg leave to read to you his letter dated at

“BALTIMORE, April 11th, 1838.

“DEAR SIR,

“*You are doubtless aware that the late act of Virginia makes the subscription by that state to the stock of the Baltimore and Ohio railroad, and all the other provisions of the act, dependent upon a subscription by the City of Wheeling of one million of dollars.*

“It is the desire of the board definitively to settle their route with as little delay as possible, and to push on the work with the utmost energy and despatch. There will also be a meeting of the stockholders on the 16th May, for the purpose of considering the act of Virginia, and of deciding upon the expediency of accepting it. The measures of the board, as well as the decision of the stockholders, will mainly depend upon the course to be pursued by Wheeling; and I am very desirous, therefore, of ascertaining as early as possible, whether the subscription of Wheeling has been or will certainly be made.

“Speaking for myself, I beg leave to say, that it would be my wish to finish the road with the greatest possible despatch to Wheeling, but I should look to the consequences of a delay upon the part of that city in making the subscription, *as highly injurious to the objects of the company*, and the interests of the city.

“I hope you will give your attention to this part of our concerns, and ensure the completion of Wheeling's subscription without delay.

“I am, dear sir,

“Very respectfully,

“Your ob't serv't,

“LOUIS M'LANE.

“*Mr. Samuel Sprigg, &c., &c., Wheeling.*”

It is proper I should here explain that the gentleman here addressed, Mr. Sprigg, was a prominent citizen of Wheeling, then a member of the committee of the council of the city, to whom this subject had been referred, and since 1835, had been the accredited agent of the company in procuring releases to the company of the right of way, &c. from the landholders on the route to Wheeling.

Such being the position of Wheeling under this law of 1838, it is not for a moment to be doubted that the company in requesting this law, and the legislature in enacting it, intended that this road should

terminate within the territories of this state, on the Ohio river, at Wheeling, and no where else. Is it to be presumed for an instant that the subscription of one million of dollars should be coerced from Wheeling, and yet that she should be deprived of the very advantages which were so eloquently urged by the company and its agents to induce her consent: that whilst this consent was extorted by threatening her with the rivalry of Pittsburg on the north, the company would still have the power under this same law, effectually to crush her by striking the Ohio river at Parkersburg on the south. Strange as this proposition must appear, as a construction so gravely offered of a law so plain, it is yet, to one acquainted with the valley of the Ohio, infinitely more strange that it should be sustained by the suggestion of continuing this road up that stream from Parkersburg to Wheeling. For I am authorized to assert, that the company could better force their way along their most difficult mountain route, than ascend the valley of the Ohio from Parkersburg to Wheeling: and it has been a matter of much astonishment to every one familiar with the subject, that this suggestion is alleged to have originated with the engineer of the company. I have noticed this argument entirely under the influence, not of its force, but from my respect for the authority from which it emanated; but I am compelled to regard it only as a desperate effort to avoid the force of the plain enactment of a statute, which cannot be successfully resisted.

I now most respectfully insist, that our position, that the law of 1838, definitively settled the terminus of this road on the Ohio river, within the territory of this state, at Wheeling, and no where else, is established beyond dispute or successful contradiction: and that, too, for a full and adequate consideration on the part of that city; a consideration thus imposed, not by the state, but by the company, and to the faithful performance of which she has subjected herself.

I shall now proceed to the examination of my third proposition—that the City of Wheeling establishes the right she claims, by the express contract between that city and the Baltimore and Ohio railroad company.

Before entering upon this enquiry, it may be useful to ascertain, where the provisions of this law, so far as this question is concerned, originated. The memorial of the company in various places, distinctly intimates, that the terms of this law, so far as route and terminus are concerned, were submitted to by the company, upon the requisition of other parties, who those other parties are, we are not informed. It has been asserted by some opposed to us, that the terms of this law as set forth in the first section, were dictated by Wheeling; and through the legislature to the company. Now, I assert and shall prove, that this law, so far as it relates to the subscription of the state of \$1,058,420, the subscription of Wheeling of \$1,000,000, the route and terminus of the road, were suggested by the company, and under the influence of its convincing arguments, adopted by the legislature. For the purpose of establishing this, to us, interesting view of the case, I will read some further extracts from the pamphlet I have before quoted, entitled “Documents submitted by the Baltimore and Ohio railroad com-

pany, in behalf of their application to the legislature of Virginia." I will simply remark, in relation to this pamphlet, that its authority as an exposition of the views and intentions of this company at that time, cannot be denied or questioned :

"The Baltimore and Ohio railroad company, having recently finished their surveys from Harper's Ferry to the Ohio river, have now arrived at that stage of their operations at which it becomes necessary for them to make a decision upon the route which is finally to be pursued.

"The surveys exhibit two principal lines of location between Harper's Ferry and Cumberland, to which the attention of the company has been directed, and in regard to which an immediate determination is to be made.

"The *first* of these lines is laid down as diverging from the present finished portion of the road at two points ; one at four, the other at eight miles east of Harper's Ferry, and extending thence through Boonsborough and Hagerstown, to Cumberland ; and lies entirely within the territorial limits of the state of Maryland.

"The *second* line is described in the surveys, as extending from Harper's Ferry through Jefferson and Berkeley counties, passing near to the town of Martinsburg, and thence to the margin of the Potomac, at the intersection of the North mountain, and along that margin to a point six miles east of Cumberland, where it crosses the river into Maryland ; presenting a continuous line of road in the state of Virginia of ninety-three miles. The surveys west of Cumberland embrace several routes terminating on the Ohio, at Pittsburg and at Wheeling."

"In a view of the two routes surveyed through Virginia and Maryland, between Harper's Ferry and Cumberland, there are several prominent advantages belonging to the former, which would offer powerful inducements in favour of its adoption, if the company were left free to act upon the consideration of mere local facilities. These grounds of preference, however, are not so decisive as to warrant a positive determination to select that route, at the sacrifice of the million by which the Maryland subscription is required to be reduced ; nor to justify the company in denying to a large portion of the people of Maryland, who are deeply interested in the other location, the benefit they have been led to believe they may derive from the road. To authorize such a selection, the company feel that they owe it no less to the Maryland public than to themselves, that it should be fortified by the strongest inducements of preference in attaining the great object of the road by the shortest, most practicable and most economical route. The location referred to is entitled to be regarded as the *shortest* and most *practicable*—but, under the circumstances of the company, cannot be rendered the most *economical*, unless the state of Virginia shall contribute her aid, by supplying that portion of the cost to be incurred within her territory, which she has been accustomed to furnish towards similar undertakings,—as an equivalent for what may be lost in the event of the work being constructed out of the territory of Maryland—and which proportion she has already agreed to contribute to the western section of this road."

"The proposition upon which the company hope to obtain the aid of this state is:

"*First.* That the state shall subscribe two fifths of the cost of constructing the road from Harper's Ferry to the point, as designated in the surveys, about six miles east of Cumberland, through the territory of Virginia: this subscription of two fifths to be paid by the state six months after the road is completed with a single track to Cumberland.

"*Second.* That the subscription shall take immediate effect, notwithstanding the postponement of the date of payment, and entitle the state, from the date of the subscription, to appoint two directors to represent her interest in the board of the company.

"*Third.* That the road shall be constructed to Wheeling; provided that city shall subscribe the amount of one million of dollars to the stock, in accordance with the powers lately conferred upon her by the legislature."

The slight variance in the law, from the terms thus proposed by the company, so far as the time of payment of the state's subscription is concerned, is an immaterial circumstance, for in the same pamphlet the company says:

"These propositions have been submitted in this form by those representing the company, from a conviction that it would be more agreeable to the state to postpone the payment of her subscription, until there could no longer be a question entertained as to the completion of the road. The company the more willingly submit to such a postponement, because they attach less importance to the period of payment than to the immediate and positive engagement of the state eventually to furnish the amount required—regarding this as an act essentially necessary to justify them, in the view of the community of Maryland and of their own stockholders, in making that decision which shall provide for the construction of the road through Virginia."

Upon the receipt of Mr. President M'Lane's letter of the 11th April 1838, the authorities of Wheeling to whom it was immediately communicated, were much astonished and disappointed, upon then learning for the first time, that this subscription of \$1,000,000 by Wheeling, had been made an indispensable condition upon which the whole operation of the act depended. The council of the city referred that letter and the subject to which it referred to a committee, with authority to proceed to Baltimore for the purpose of conferring with the directors and the railroad company, to ascertain upon what terms that subscription could be made. Mr. Sprigg advised Mr. President M'Lane of the appointment of this committee, and the purpose for which they desired to meet him in Baltimore. To this letter the following answer was returned by the president.*

* This letter is also addressed to Mr. Sprigg, who had during the previous winter been in Richmond to represent the interests of the city before the legislature, so far as the Baltimore and Ohio railroad company was concerned.

" BALTIMORE, April 18, 1838.

" DEAR SIR,

" I received this morning your letter of the 14th instant, and I learn with great regret, that there are difficulties in the way of a subscription by the City of Wheeling, which here at least, certainly were not anticipated. The condition in the law in regard to the subscription of Wheeling was not of our seeking. When we left Richmond *no such idea had been suggested from any quarter*, and it was with surprise and regret that we afterwards learned it had been adopted. It is now indispensable, however, and I hope the authorities of Wheeling will deem the road of sufficient importance to them to comply with the act. *If we are driven from Virginia by acts which we cannot control, our obligation will still remain to reach Pittsburg with the earliest possible despatch*, and this may compel us to adopt the Maryland route under all its disadvantages.

" I write now, however, to assure you of the pleasure it will afford me to confer with any committee who may come on for the purpose ; but have to request that unless they can arrive here before the end of the present week, they will defer their coming until the middle of next ; as my business will oblige me to be absent from this city from Saturday next until Wednesday following.

" I am, very respectfully,

" Dear sir,

" Your obedient servant,

" LOUIS M'LANE.

" *To Samuel Sprigg, Esq.*"

I will now beg leave to read a letter from the Hon. Lewis Steenrod. It is an answer to the following letter addressed by Col. Thompson of Wheeling :

" RICHMOND, Virginia, Jan. 4, 1845.

" *Hon. Lewis Steenrod.*

" SIR,

" In the discussions before the committee of roads and internal navigation of the legislature of this state, and before the house of delegates, should the application of the Baltimore and Ohio railroad company for the right of way to any point north of the mouth of the Little Kanawha reach that body, it may be material to have your knowledge of the circumstances, and at whose suggestion or motion, the condition of subscription of one million of dollars on the part of the City of Wheeling, was made. The subscription of one million on the part of that city you are aware is one of the terms comprised in the law of April 2d, 1838, fixing Wheeling as the terminus in this state.

" The following is an extract from a pamphlet prepared by Mr. J. Knight, and other agents of the company, sanctioned by Louis

M'Lane, Esq., the president of the company, and submitted to the legislature of Virginia before the passage of that law :

“‘*Third*. That the road shall be constructed to Wheeling, provided that city shall subscribe the amount of one million of dollars to the stock in accordance with the powers lately conferred upon her by the legislature.’

“You were present in the City of Richmond, and may have some knowledge of the circumstances above referred to—if so, please answer at your earliest leisure.

“Respectfully,

“Your ob’t serv’t,

“GEORGE W. THOMPSON.”

I shall now read the answer without comment.

“HOUSE OF REPRESENTATIVES, 6th.

“DEAR SIR,

“In reply to your’s of the 4th instant, I can inform you, I was in Richmond in the spring of ’38, and took a deep interest in the success of the application of the Baltimore and Ohio railroad company, then before the legislature. This brought me in frequent intercourse not only with Mr. M’Lane and Mr. Knight, but the members of the legislature.

“I recollect well that the subscription of one million of dollars by the City of Wheeling or its citizens was first suggested by Mr. M’Lane, and by him made a *sine qua non*. I thought the sum was too large and at first opposed it, but I soon became satisfied that the company could not succeed with their application unless the city consented to make this subscription, and I then became its advocate. I know further that all the writings that were drawn by Mr. Knight in relation to this application of the company were submitted to Mr. M’Lane, and by him approved before the friends of the application were allowed to use them with the members of the legislature, to forward the scheme.

“On my return from Richmond, I called on Mr. M’Lane at Baltimore, and he then and there expressed himself well satisfied with the act as passed.

“I am, your ob’t serv’t.

“L. STEENROD.”

I do not propose making any comment upon the apparent discrepancy between these several papers. It is doubtless susceptible of explanation. I have read them at this time simply for the purpose of shewing the origin of all the terms of this law, which are in any way material in the present investigation. They originated with the company, and the policy adopted by them was the deliberate suggestion of that company. That policy was well considered by the board of di-

rectors before they submitted it to the legislature, and the stockholders of the company approved and adopted it, after six months cautious investigation. So that the City of Wheeling now reasonably claims that it shall not be unsettled excepting only from controlling and imperious necessity. Such necessity I hope to be able to demonstrate has no existence, save in the unsupported allegations of those who differ from us.

The committee appointed by the City of Wheeling, consisting of Moses W. Chapline, Esq., (mayor at that time,) and two members of the council, proceeded to Baltimore and opened their negotiations with the company, upon the subject of this subscription. This negotiation after considerable discussion between the agents of the respective parties, finally resulted in this *ultimatum* of the company, as communicated to his honour by Mr. President M'Lane.

"OFFICE OF THE BALTIMORE AND OHIO RAILROAD COMPANY,
"3d May 1838.

"TO MOSES W. CHAPLINE, ESQ.,
"Mayor of the City of Wheeling.

"SIR,

"The committee with whom you have conferred, relative to the terms upon which the subscription by the City of Wheeling of one million of dollars, required by the late law of Virginia to the capital stock of the Baltimore and Ohio railroad company, may be rendered mutually satisfactory, have fully considered the proposition submitted by you.

"The subscription of one million of dollars by Wheeling is, by the provisions of the Virginia law, rendered absolutely necessary for the objects of those sections of country more immediately interested in the prosecution of the railroad to the Ohio river, and it is obvious that those objects would be more speedily and certainly accomplished by a clear and unqualified subscription on the part of your city.

"If, however, as it may be apprehended from the representations of yourself and colleagues, this should be found impracticable, it will become the duty of the stockholders to decide whether they will accept the law of Virginia with a subscription by Wheeling upon the basis of a longer credit for payment than may be consistent with a prompt prosecution of the work.

"The committee with whom you have conferred have no power to make an agreement for the stockholders, or to give an absolute assurance that the law of Virginia will be accepted with a qualified subscription on the part of Wheeling. They can only recommend to the stockholders the adoption of such course as in their opinion would be expedient that the stockholders should accept.

"The committee could not recommend the stockholders to accept the law with a subscription by Wheeling, so indefinite in point of time, and so contingent upon events which it may not be possible for either party to control, as that contained in your proposition; but if the subscription can be made more specific, and at the same time ren-

dered compatible with a proper credit for the payment, the difficulties they feel, and which have been fully explained to you might be obviated.

"I am authorized to state, therefore, that the committee will unite in recommending the stockholders to accept the late law of Virginia, if the City of Wheeling will make the subscription required of her upon the following terms, that is to say: 1st. The City of Wheeling immediately to subscribe one million of dollars to the capital stock of the Baltimore and Ohio railroad company. 2d. To pay the said subscription in the stock of the city, paying an interest not less than five per cent. per annum, and deliver to the company at such times and in such portions as may be required by the board of directors.

"3d. Upon the stock so delivered, the City of Wheeling shall not be required to pay interest for the period of five years from the date of subscription, unless the road shall be sooner completed to the City of Wheeling; but that during the said period of five years, or until the road shall be so completed, the interest, if any, payable upon the stock of the City of Wheeling, shall be paid by the Baltimore and Ohio railroad company.

"4th. If it become necessary, at any time, for the company to sell the stock of the City of Wheeling, the premium above the par, if any, which may be obtained therefor, to be paid to the City of Wheeling.

"5th. That the City of Wheeling will use her exertions in good faith to procure the guarantee by the state of Virginia of the city stock; and the company will not attempt to sell any portion of the stock until the end of the session of the Virginia legislature next ensuing the subscription, unless such guarantee shall sooner be obtained.

"6th. The City of Wheeling shall have the option of redeeming the stock at any time before the sale thereof by the company upon the payment in cash of the par value.

"In regard to the suggestions which have been presented as to the time of commencing and prosecuting the work to the Ohio, it must be obvious to all, that none can have a deeper stake in the immediate commencement and seasonable completion of the undertaking, than those already embarked in it; and I am sure it is the wish and determination of the board to commence and prosecute the entire work, and every part of it, as promptly, and with as much dispatch as the means at their command will allow.

"I am, sir,

"Very respectfully,

"Your ob't serv't.

"LOUIS M'LANE, *President.*"

With this proposition the committee returned to Wheeling and laid it before the council. After several weeks deliberation, and further unsuccessful attempts to procure some additions to the terms, the council finally acceded, and by the advice of the people of Wheeling, in town meeting assembled, passed the ordinance of the 31st day of May 1838.

This ordinance I will now read to you :

“AN ORDINANCE

“Authorizing a Subscription in behalf of the City of Wheeling to the Capital Stock of the Baltimore and Ohio Railroad.

“Be it ordained by the council of the City of Wheeling :

“SEC. 1. That John H. B. Latrobe, Esq. of the City of Baltimore in the state of Maryland, shall be and he is hereby authorized and empowered, in the name and for and on behalf of the City of Wheeling, to subscribe for ten thousand shares in the capital stock of the Baltimore and Ohio railroad company, upon the following terms and conditions, viz :

“*First.* The amount of said subscription to be paid in the bonds of the City of Wheeling, bearing interest at the rate of five per cent. per annum, and payable in fifty years from the dates of the same, said bonds to be executed and delivered at such times and in such portions as may be required by the board of directors of the said company. *Provided always,* That upon the bonds so delivered the City of Wheeling shall not be required to pay interest for the period of five years from the date of subscription, unless the road shall be sooner completed to the City of Wheeling ; but that during the said period of five years, or until the road shall be so completed, the interest, if any, payable upon the said bonds, shall be paid by the said Baltimore and Ohio railroad company. The interest on the said bonds to be payable at such place in the City of Baltimore as the board of directors of the said company may require.

“*Second.* The premiums on the said bonds above the par value, if any, shall be received upon the sale thereof by the company, to be paid to the City of Wheeling.

“*Third.* The said Baltimore and Ohio railroad company to make no sale or transfer of the said bonds until after the next session of the general assembly of the state of Virginia, unless the state of Virginia shall before that time guarantee the payment of the same. The City of Wheeling hereby agreeing and pledging itself in good faith, to use every exertion to procure the said guarantee by the said state of Virginia of the payment of the principal and interest of the said bonds at the next session of the general assembly thereof.

“*Fourth.* The City of Wheeling to have the right to redeem the said bonds at any time before the same shall be sold by the said company, upon the payment in money of the par value thereof.

“SEC. 2. The ordinance entitled ‘An ordinance authorizing a subscription in behalf of the City of Wheeling, to the capital stock of the Baltimore and Ohio railroad company,’ passed May 12th, 1838, shall be and the same is hereby repealed.

“SEC. 3. This ordinance shall take effect from and after its passage.

“Passed May 31st, 1838.

“MOSES W. CHAPLINE, *Mayor.*

“JAMES S. WHEAT, *Clerk.*”

This ordinance, certified under the common seal of the City of Wheeling, was transmitted to the Baltimore and Ohio railroad company. A sufficient letter of attorney was also transmitted to John H. B. Latrobe, Esq. of Baltimore, the agent selected to make the subscription. Mr. Latrobe was then, and I believe still is, the attorney at law for the company. The terms of the agreement set forth in the ordinance having been maturely considered, were approved and regularly adopted by the company, and in fulfilment of the trust reposed in him, Mr. Latrobe some time in the summer or fall of 1838, (for of the precise time we are not informed,) made the subscription regularly on the books of the company. By that act, and from that time, that city became, and to this hour still remains, a stockholder in that company to the amount of \$1,000,000, and of this character she has not been, nor can she be divested, excepting by the concurrent action of herself and the company. The two parties who made the agreement can alone cancel it: and if the consideration which is admitted on all hands to have been the sole inducement to the contract—the very *gist* of the bargain, should fail, the party seeking to be released by reason of that failure, should by all received rules governing such cases in our courts of justice, and in all our ordinary transactions, certainly be required to shew that the failure is not only unavoidable, but that no reasonable effort would prevent it.

Now what is this contract? The City of Wheeling agrees to subscribe for \$1,000,000 of the stock of the Baltimore and Ohio railroad company, and to pay for it in the mode prescribed by the company. What was the consideration for this undertaking of the city? The mere ownership of the stock and the right to that extent to share in the profits of the road when made? This was of course the object in part: but what was understood by the parties themselves to have been the real consideration, the very basis of the whole transaction? It is admitted on all hands, friends and foes all agree in this one thing at least—it was to secure beyond the reach of all future contingencies, so far as the parties could secure it, the construction of the road, according to the plain and express terms of the law of 1838, to the City of Wheeling in the county of Ohio. Now may I not reasonably assert that the City of Wheeling has established her right in this behalf by the express contract subsisting between that city and the Baltimore and Ohio railroad company—a contract still in force and uncanceled. When this contract is to be enforced, saving so far as it is involved in the present proceedings, is not now a question for us to decide. It will be time enough to consider that question when the necessity occurs for deciding it. The simple question now before this committee is whether we have shewn such a contract does really exist. If its existence is established by us or admitted by our adversaries, the only question then remaining with the committee is, shall the legislature of Virginia abstain from authorizing or sanctioning its violation? The question is not, shall the legislature undertake to enforce its performance?

I will now examine briefly the terms of this contract, for the purpose of shewing that there is not that inequality which is alleged, between the interests of the two parties under it. No part of this dis-

cussion astonished me more than the allusions, passing through all the varied forms of sarcasm, sneer and mockery, with occasional relaxations by way of jest, in which the argument of Mr. President M'Lane and the memorial of the delegates and senators from Northwestern Virginia so richly abound upon this point. In the estimation of these gentlemen, the whole case would seem to turn upon the assumed absurdity of the undertaking of the City of Wheeling to give her bonds for \$1,000,000 in payment for an equivalent amount of the stock of the company. And so satisfied are they with the justice and accuracy of this opinion, that the alleged insolvency of Wheeling, amid much seemly and becoming appearance of sympathy for her melancholy fate, both present and anticipated, forms the burthen of their appeals. And as if to give still greater force to this plea in avoidance, they call upon her not only to redeem her own engagements, the performance of which they allege is an impossibility, but also to redeem the engagement of Virginia, which is at the same time admitted to be lapsed and void, and to make good to the company the assumed loss consequent upon the legislation of Pennsylvania. That is, when Wheeling is presented before you, claiming the protection of *her* contract, by a strange kind of interpolation they would foist in the abandoned engagement of one party, and a guarantee against the loss consequent upon the acts of another. Now I protest against this mode of answering our claim : and I think I may claim the approbation of this committee, when I reply that the City of Wheeling will hold herself ready to perform her part of the agreement, and will *with* the company, not *for* the company, bear as a stockholder her share of the losses.

Upon examining the terms of this contract, we find that it was with reason Mr. President M'Lane intimated to us, in his letter of April 18, 1838, that the difficulties in the way of the subscription by Wheeling, which had been suggested by us, were not then anticipated in Baltimore. Farther experience it may be, has corrected the opinion of Mr. M'Lane in this particular ; but I will submit to this committee the arguments which then answered our objections, and leave their sufficiency to be tested by those to whom they are now offered.

It was then insisted that a payment in bonds was a sufficient payment under the law of 1838 ; that as these bonds did not become a charge upon the city until by the completion of the road she would be in the receipt of the dividends upon her stock ; and as that stock would in any event certainly pay at least five per cent. and probably six or even seven per cent. ; so far from the bonds becoming a burden, the stock being at least par, would not only enable the city to fund the debt created by this agreement, if she chose so to do, but might actually be a source of profit over and above the amount of her annual interest.

It has been by some rather strangely argued, that the guarantee of the payment of the principal and interest of these bonds by the state of Virginia was a condition of the agreement ; and that the city having failed in procuring that guarantee, although she redeemed her pledge in the zealous effort she made to procure it at the December session 1838, the agreement of subscription has become null and

void, and the subscription itself a dead letter. To meet this argument it is only necessary to refer to the plain terms of the contract itself. The clause relating to the guarantee itself sufficiently negatives this pretence.

In one part of his argument Mr. President M'Lane says :

“It could scarcely be supposed, if the road should not go to Wheeling, that the company would exact the delivery of the Wheeling bonds, and the payment of its interest, which, if the subscription be a subsisting one, has been accruing since June 1843, according to the ordinance of the city, and is now in arrear; but as the conditions of that law have not only become impracticable, and the law itself has expired, the subscription by Wheeling must be taken to have expired with it, and to have shared a similar fate with the hopes and expectations entertained by the company in 1838.”

Whilst I agree with him that unless the road goes to Wheeling the company have no right to demand the delivery of these bonds, I do most respectfully differ from him in his other construction, that admitting the subscription to be a subsisting one, the city is indebted for arrears of interest since June 1843. The very state of things which relieves the city from the delivery of the bonds, so long as the parties are so situated, necessarily suspends the right to demand the interest. But to end this part of my argument, permit me to submit to you a case which I think will test the accuracy of our respective positions: Suppose the legislature of Virginia should grant to this company the right to construct their road through the territory of this state to the City of Wheeling in the county of Ohio; and that after the proper instrumental surveys and estimates, the company should be satisfied that this route was a practicable one, and should accept the law:—Now, when they should commence the work in good faith, with the intention of constructing the road according to the terms of this supposed law, what would be the condition of Wheeling under the subsisting contract of subscription? The company demands her bonds. What answer can she give? That the law of 1838 has expired by its own limitation? Certainly not; for although it may have expired with reference to some of its provisions, as for instance the state's subscription, and the right of the company to continue their road in Virginia, yet as to other most important interests it continues in full force and effect. It is in full force to guarantee the company's title to the road which they have constructed under it in Virginia. So also is it in full force to preserve the rights of all parties concerned in the execution or performance of any of its other provisions, so far as the same have been executed or performed. That part referring to the subscription of Wheeling has been executed by the parties—and it may be, unwisely by the city. The force and effect of the law continues for the preservation of all the rights of either party growing out of this part performance of the law. But even if my construction of the law of 1838 should prove error, there is still another difficulty in the way of Wheeling. The law of March 9th, 1838, authorized the City of Wheeling to subscribe for 10,000 shares or \$1,000,000 of the

stock, without any condition whatever. The subscription was made upon the terms set forth in the ordinance of the city, without any condition whatever other than that which is admitted to be implied under the law of 1838 as to terminus. Now if this subscription be a subsisting one, and the City of Wheeling is thus liable to the demand of the company for her bonds, in the case supposed, is not the obligation of the company equally clear to make Wheeling the terminus if empowered so to do by the legislature of Virginia. Otherwise we have the absurdity of a contract, between parties of equal ability to contract, compelling one to the performance, and leaving the other free to execute or annul it. I submit these views with all proper deference for the superior legal acumen of the distinguished gentleman who represents the company.

Here permit me to submit to you some proofs, which shew that the company and its officers continued to recognize the City of Wheeling as a stockholder, and the contract of subscription as a subsisting one down to within the last eighteen months or two years. It is very true that the opinions of some on this point may have undergone a change within that period. Be this as it may, I feel very confident that so far as we can ascertain, you will think that I am not very far wrong, when I attribute this change to causes foreign to the merits of the question.

Shortly after the making this subscription, Mr. Latrobe, the attorney in fact for the city, who attended to that act, after advising the authorities of Wheeling of his execution of that trust, suggested Mr. President M'Lane as the most suitable person to represent her stock. Before the proxy could be sent to him however, upon the suggestion of a member of the council, acting as it was stated by his, Mr. M'Lane's advice, the proxy was sent to Mr. Hugh W. Evans of Baltimore, who was represented to be of that party in the company favourable to the support of Mr. M'Lane in office, and the policy adopted by that gentleman in the management of its affairs. In the latter part of the month of July 1839, Mr. President M'Lane himself applied for a renewal of that proxy to Mr. H. W. Evans. This was after the passage of the law of 1839 by Pennsylvania, and after the failure of the attempt to procure the guarantee of the state of Virginia. In the 13th annual report submitted to the stockholders by Mr. President M'Lane, January 1, 1840, the subscription of Wheeling of \$1,000,000, was set down as amongst the means of the company for the extension of the road west of Harper's Ferry. This was after the Pennsylvania law of 1839 had been made known to the company, and a rigid scrutiny of the details of its provisions. In 1841, at the request of Mr. M'Lane, the proxy granted to Mr. Evans was revoked, and he, Mr. President M'Lane being willing to accept and act under it, it was granted to him. In September 1842, the council of Wheeling having been informed that Mr. M'Lane had mislaid this proxy, at his request, under circumstances manifesting much anxiety on his part, and after the most careful investigation on the part of the city, a new proxy was issued to Mr. M'Lane, authorizing him to represent the City of Wheeling, and vote at all meetings of the stockholders upon her stock. This proxy I presume Mr. M'Lane has still in his possession. In the sixteenth an-

nual report of the president of the company, submitted on the second Monday in October 1842, there is the clear and direct recognition of the City of Wheeling as a stockholder, and the contract of subscription as a subsisting one. In the memorial of the company, presented at December session 1842, which I read to you, the same facts are distinctly admitted and urged upon the legislature of Virginia.

Having thus briefly rehearsed these proofs, you will agree with me that in making the acknowledgment that Wheeling "in one instance did, and *in all was entitled* to exercise the rights and privileges of a stockholder, so long as there was a possibility of complying with the terms of the law of 1838, and during the continuance of her rights under that law," Mr. President M'Lane did nothing more than he promised you in his opening remarks he would do, that is, that he would admit every thing, which could not be successfully controverted. And I will here only add my humble opinion, that his argument does not even redeem this guarded promise; for it will in the sequel appear, that he has not admitted, but denied some things of importance and interest, which he has failed to controvert. But I must claim the authority of Mr. M'Lane under his admission that I have here repeated, that the City of Wheeling is entitled to all her rights and privileges as a stockholder, until the company shall shew the impossibility of complying with the terms of the law of 1838. The chief and most important of these rights, gained by her as a stockholder, is the right of being the terminus of the main line of this road on the Ohio river.

I now insist that the City of Wheeling has demonstrated that she has a vested right to the terminus of this road by virtue of the contract now subsisting between that company and the city; and before I conclude I shall also shew, that as the operation of the Virginia law of 1838 was not dependent upon the legislation of Pennsylvania, and as nothing can avoid the continuing force of this contract, except the impracticability of its execution, upon the evidence now before this committee, and that which I shall submit, this impracticability does not exist as alleged, but that on the contrary its literal fulfilment is within the power of the company, without any material sacrifice of its interests. This being done, it is conceded on all hands, that the present application of the company must fail.

It has been most erroneously urged by some that the preponderating interests of northwestern Virginia are necessarily opposed to the interests and claim of Wheeling. Upon examination it will be found this is not so, but that on the contrary the very reverse is the truth of the case. What interest is in reality arrayed against this claim of Wheeling, and in support of the company in this contest? I am aware that the company in their memorial throw out a bait to many different sections, in suggesting various termini; but which is the real interest giving vigour to the struggle. Is it that connected with the terminus at the mouth of Fishing creek? No! It is very true that route and terminus are selected by our opponents for all their comparative estimates, because it is the shortest, and therefore probably the cheapest to construct. But I do not presume that any one seriously believes that the company, or rather its agents, entertain the remotest idea of

selecting that terminus, should they even succeed in their present application. All must frankly admit that the real conflicting interest is that dependent upon the terminus at Parkersburg. They use Fishing creek and its peculiar interest to break the claim of Wheeling, not that the fruits of victory shall enure to Fishing creek, but that Parkersburg may reap the harvest. Parkersburg and its route are wisely kept in the back ground; and I shall only bring them to your notice here, by declaring as I do upon the authority of one whose opinions cannot be successfully controverted, and will therefore, I presume, be frankly received, that this route to Parkersburg by any of the points proposed, is the longest, most expensive, and therefore most impracticable of all the routes proposed by the company and the City of Wheeling. This sufficiently explains the omission of this route from the abstract of the chief engineer of the company. Now make the comparison suggested between these rival routes and termini. Take on the one hand the counties of Brooke, Ohio, Marshall, Marion, Monongalia, Preston, and a very considerable portion of Tyler, (I ought to say the whole of Tyler,) and on the other hand Parkersburg and all connected with it by any route you please, and adopting any standard whatever, whether of population, taxation, productive capital, or capacity for sustaining a dense population, or all these combined, and the result must be, in the conclusion of every informed and impartial mind, that the interest connected with the terminus at Wheeling in all preponderates decidedly, and in some of the elements named defies competition. Our opponents may probably have the advantage in extent of territory, for their route is the longest. So that, apart from all questions of vested right, the interest of the company, and the maxim that you shall seek to do the greatest good to the greatest number, sustain the present claim of the City of Wheeling. I do not here detain you with the proofs of what I have here asserted. At the proper time they will be forthcoming if necessary.

I propose now to consider the connection alleged in the memorial of the City of Wheeling, to have existed between her subscription of one million of dollars and the state of Maryland subscription of three millions of dollars. In the argument of Mr. M'Lane, the alleged misapprehension of the author of that memorial is brought very prominently forward, as if it formed the very basis of the claim of Wheeling; and that in overthrowing this important support to the appeal of that city, its right which we think clearly established by other proofs, falls also. But I apprehend this view will not be adopted by this committee. Let the allegations of the memorial in this behalf be sustained or not, it leaves the position of Wheeling untouched. If it is not sustained the company is relieved from the imputation of having used the City of Wheeling for the advancement of *its* interests, and the desired end being accomplished, of having abandoned her to her fate, to seek out new allies who could render services not now in her power to accomplish. But if I succeed in establishing the allegations of that memorial, notwithstanding the opposing view taken of the subject in the argument referred to, we place that company in the position we think it should occupy before the Virginia legislature, and we shall claim the

full benefit of all the equity resulting from that state of the case. I will frankly acknowledge that nothing in the argument of Mr. President M'Lane, able as it undoubtedly is in all its parts, marked throughout with that ability for which that gentleman is so distinguished, so startled me as these declarations contained in that argument :

“It may be confidently affirmed :

“1. That the *subscription* by *Maryland* had not the remotest reference to the *certificate* on which the Wheeling memorial alleges it was based.

“2. That the *bonds* referred to in the memorial never did come into the hands of the railroad company, although the company received other bonds, of which the author of this memorial appears to have no knowledge, but free from and independent of any condition whatever, relating to *Wheeling* or any other subscription ; and

“3. That in the certificate to which it is presumed reference is made, Wheeling is not only not treated, but actually and necessarily excluded, as a terminus of the road.”

It is true that I had only that indirect knowledge of the facts involved in these declarations which could be obtained from the perusal of the laws of Maryland, passed June 4th, 1836, the act of December session 1837, ch. 314, and December session 1838, ch. 386. These laws I obtained from the compendium published by the company in 1840 ; and since the delivery of his argument, Mr. M'Lane has kindly furnished me with the resolutions of the Maryland assembly, adopted March 1838, ch. 26, and March 30, 1838, ch. 68. Since then I have obtained other documents of much importance relating to this subject. These laws and resolutions are to decide between the memorial of the City of Wheeling, and the argument of Mr. M'Lane—he having assured me that no other legislation of Maryland excepting that to which I have referred, touches this question. Since hearing these declarations of Mr. M'Lane so emphatically announced, and accompanied as they were by allusions of no very flattering or agreeable character, I have availed myself of every interval of leisure afforded me by the course of your proceedings, carefully to examine all the evidence within my control and open to my inspection. I did this with all that care and circumspection, naturally induced by the respect I have ever entertained for the opinions of Mr. M'Lane, and the fact of his intimate knowledge of the affairs and transactions of this company, growing out of his connection with it as its president, since shortly after the passage of the law of June 1836. The result has been the conviction, that the allegations of the memorial of Wheeling are true as stated, and that in making these declarations Mr. M'Lane is not sustained by the evidence upon which he has based them. And I now respond to these declarations by asserting :

1st. That the payment of the subscription of Maryland made in September 1836, had a direct reference to the certificate on which the Wheeling memorial alleges it was based.

The committee will remember that at an early sitting I complained of the literal criticism of the Wheeling memorial adopted by our op-

ponents. You will also remember I then insisted that the point urged by the Wheeling memorial was that this subscription of Maryland had been rendered available by means of the Wheeling subscription. If this be true, it is apparent that the position of Wheeling in this controversy is materially strengthened. It explains the anxiety manifested by this company to obtain the Wheeling subscription—the reasons which induced the granting the terms of the contract which seemed so favourable to the interests of the city.

I further assert in the second place, that the bonds of Maryland were given in payment of the subscription of that state, upon the performance by the company of that condition of the law of 1836, which related to the subscription of Wheeling.

I further assert, that in the certificate which was referred to and which has been produced by the company and filed amongst the papers of the committee, Wheeling is not only treated, but actually and necessarily contemplated, as a terminus of the road, and in the last place,

I assert that these bonds of Maryland, thus obtained by the company, by means of the subscription of Wheeling, were used, in part, to procure the rails for the superstructure of their road between Harper's Ferry and Cumberland; and that without the arrangement made by means of those bonds, in the mode so successfully adopted, these rails would not, in all probability, have been procured, and the fate of this great work might have been very much like that of the Chesapeake and Ohio canal.

To the establishment of these several assertions, I shall now apply myself. You will perceive I have joined issue upon the several questions started by our opponents on this point of the case, and all that I now ask is a fair and impartial hearing: this I am confident of receiving from this committee. I shall be as concise as brief both in bringing forward my proofs, and making my comments, as circumstances will admit.

Let us examine the legislation of Maryland; and in the first place, what are the stipulations of the act of June 1836 referred to? There are two distinct classes of them. Certain things were to be done before the treasurer was authorized to make the subscription of \$3,000,000. Certain other things were afterwards to be done, before the treasurer was authorized to pay any part of the subscription so made. Before the treasurer could make the subscription, it was necessary,

First. That the Chesapeake and Ohio canal company, and the Baltimore and Ohio railroad company should both accept the law.

Second. A condition relating to the Maryland canal company.

Third. That the Baltimore and Ohio railroad company should guarantee out of the profits of the road, six per cent. to the state on the amount of her subscription of \$3,000,000.

All these stipulations having been complied with, the treasurer made the subscription in September 1836.

Before any part of the subscription could be paid by the treasurer it was necessary,

First. That the six per cent. currency stock authorized to be issued by the act, should be sold for a premium of not less than 20 per cent. above its par.

Second. That not less than six months notice should be given of the time when an instalment would be required.

Third. That the certificate before referred to and described, should be given by the majority of the state directors, shewing the company to have the funds sufficient to complete their road to the Ohio river as described in the law.

Fourth. That there should be an estimate of the engineers shewing the cost of the road as described.

Fifth. That but one million of dollars of the subscription should be called for in any year.

Sixth. That no instalment on any of the stock of three millions of dollars should be paid by the treasurer, until after an equal proportional payment should have been actually paid by the other stockholders on their shares of the capital stock of the company.

We will now endeavour to ascertain whether the company were released from any of these last six stipulations, and if so, how far it was so released. This we can ascertain only from the resolutions and laws before referred to.

After the passage of this law, and before the company were able to furnish the certificate or estimate mentioned in the 3d and 4th stipulations before recited, the company on the 30th March 1837, entered into a contract with the commissioners who had been appointed under the law of 1836, to proceed to Europe for the purpose of selling the state bonds, amounting to \$8,000,000. This contract was made before the commissioners went to Europe, and in its terms was entirely contingent upon their success or failure; it being expressly provided, that the contract should be null and void, if these commissioners should succeed in Europe or elsewhere, in negotiating these bonds, before the 1st October following, or before their return from Europe, or within thirty days after their return. By this contract the company agreed to pay the commissioners for the use of the state, the price of these bonds as fixed in the law of 1836. I will simply remark in relation to this contract that its object is apparent upon its face, and that the payment for these bonds to be made by the company, was to take place, whenever the company should become entitled by a compliance with the law of 1836, to demand the payment of the state's subscription, and out of the funds which should then be received from the state. That is, the company sought to anticipate the arrangement subsequently made by the state, and change the mode of payment of the state's subscription, whenever that payment should become due. This view is fully sustained by the resolutions of the Maryland assembly, passed March 8, 1838, ch. 26. These resolutions ratify the contract made with the commissioners, it being doubtful whether under the law of 1836, they had any authority to make this contract. This is their whole scope and effect, and so far from releasing any of the stipulations of the law of 1836, now under discussion, they in several passages negative the idea of such release.

It cannot be pretended that either this contract or the resolutions of the Maryland assembly of March 8th, 1838, affected any of the conditions referred to. But to remove every doubt, permit me to refer you to the next legislative act of Maryland, the law of the 29th March 1838, passed a few days before the Virginia law of April 2d, 1838. When the company applied for this law, "the particular and minute survey" required to be made by the act of June 1836, had not been completed, and the amount that might be required to construct the road from the Ohio river, along the route prescribed, to Harper's Ferry, was not known. It was apprehended, however, that this amount might exceed any sum that could be obtained, from the only sources that the act permitted to be available for that purpose, that is the state of Maryland, and the Cities of Baltimore, Pittsburg and Wheeling (Wheeling had not then made her subscription of one million of dollars); accordingly at the December session 1837, an application was made to the legislature of Maryland to allow the company to estimate upon any practicable route, and to include in their calculation of funds to complete the road, subscriptions or loans obtained from any sources whatever. The legislature granted the application as you find in this law, but they coupled it with a variety of conditions.

From this law it is clear that the company did not understand the requisition of the law of June 1836, as to this certificate and estimate, had been released. The company, however, did not decide upon the acceptance or rejection of this law until subsequent events rendered their decision unnecessary, the operation of the law depended on their acceptance; for on the very day that the Virginia law of 1838 was accepted, this law was laid on their table by the stockholders, the purposes of the company having been accomplished without its aid, and there it has ever since remained.

In the mean time the law of Virginia was passed, April 2d, 1838, requiring the City of Wheeling to subscribe \$1,000,000: and the estimate made out from the surveys was completed, shewing that the road could be made with a single track, using the plate rail, along the route prescribed by the law of 1836. From this estimate it was discovered, that the subscription of Baltimore of \$3,000,000, and that of the City of Wheeling of \$1,000,000, would with the Maryland subscription of \$3,000,000, cover the estimate and enable the state directors in that company to make the certificate required by the law of 1836. Accordingly we find that on the 1st day of October 1838, that, and on the 10th November 1838, this certificate and the estimates of the engineers, regularly verified, were filed with the treasurer of the Western shore of Maryland. But while the third and fourth stipulations of the act of June 1836, were thus complied with, by means of and through the Wheeling subscription, those conditions, "relating to the 20 per cent. premium—the six months notice,—the payment of but one million per annum,—and the payments *pari passu* with the other stockholders;—remained uncomplished with, and still effectually prevented the use of the state's subscription."

"To obviate the necessity of complying with these stipulations, an application was made to the legislature of Maryland at the December

session 1838, and the law of April 5th, 1839, was passed." The whole effect of this law was to place in the hands of the railroad company, at once, the 5 per cent. sterling bonds of the state, for the entire subscription, dispensing thereby with the six months notice, and without limit of the price at which the bonds were to be sold, and without restriction as to the amount which was to be paid in a given period. The only conditions annexed to this law were, that the company should release its contract with the commissioners, and mortgage its property to secure the payment of the interest for three years, or leave an amount of bonds in the treasurer's hands for that purpose. This release and mortgage were executed by the company.

Thus were all the conditions of the law of June 1836, complied with so far as the same had not been released, and the bonds of the state became the property of the company in payment of the state of Maryland subscription. They do not hold those bonds by virtue of the contract of March 1837—and why? That contract has been annulled and released, and that too before the bonds they do hold were delivered. The resolutions of March 8th, 1838, did not release the condition requiring the certificate and estimates. For we find the company procuring the passage of the law of March 29th, 1838, to enable the company to furnish this very certificate and estimates: this law was not accepted by the company, and did not, therefore, go into operation, because, as I have shewn, it became unnecessary. The law of April 5th, 1839, did not release this condition,—and why? Because the company had already performed the condition on the 10th of the November preceding.

Now may I not reasonably demand of our opponents, to shew the release of this condition, in the performance of which by the company the City of Wheeling bore so conspicuous a part. In the construction I have given of these proofs, brought forward to sustain his declarations by Mr. President M'Lane, I am not unsupported. I can refer you to most excellent authority—an authority to which our opponents must feel compelled to defer, and which Mr. M'Lane must treat with respect. I refer to the written opinion of John H. B. Latrobe, Esq., the counsel of the company, given to the company sometime in the year 1839, under an order of the board of directors. He is a legal gentleman whose professional character and reputation, demand at your hands confidence in his opinions upon this question, and more especially when you remember that his connection with this company as its legal adviser, has been of longer duration than that of Mr. M'Lane as its president. This opinion I now beg leave to read:

“OPINION OF JOHN H. B. LATROBE, ESQ., COUNSEL FOR THE BALTIMORE AND OHIO RAILROAD COMPANY.

“*To the President and Directors of the
Baltimore and Ohio Railroad Company:*

“GENTLEMEN,

“The following resolutions have been placed in my hands, and in compliance with them, I proceed to state the result of the examination I have made, and the opinion that I have formed.

“ ‘*Resolved*, That the counsel for the company be requested to consider the various acts and resolutions of the legislature, in relation to the state’s subscription of three millions of dollars, authorized by the act passed June 4th, 1836, chap. 395, and that he communicate to this board at its next meeting, in what particulars this company has been relieved from the stipulations in the said act of 1836, by the act of 1837, chapter 314, or by the resolutions of March 8th and 30th, 1838, or by the act of April last, or by any other proceeding of the legislature subsequent to June 1836. And that he advise this board, according to his best judgment, of the conditions now existing in reference to the appropriation of the said subscription of three millions of dollars, according to the true intent and meaning of these various legislative acts and resolutions.’ ”

“In compliance with the resolutions of the board, the first matter to be enquired into is: What are the stipulations of the act of 1836, (1835, ch. 395,) referred to?

“This act required certain things to be done, before the treasurer was authorized *to make the subscription* of three million of dollars. Certain other things were afterwards to be done, before the treasurer was authorized *to pay any part of the subscription so made*—and the acceptance of the act imposed new duties upon the company.

“Before the *subscription* of three millions of dollars *could be made*, it was necessary,

“*First*,—That the Chesapeake and Ohio canal, and Baltimore and Ohio railroad companies, should *both* accept the act.

“*Second*,—That the Maryland canal company (the cross cut canal) should certify to the treasurer, that a sufficient amount had been subscribed to the stock of that company to justify the commencement of the construction of the canal, and to insure its completion by the most northern practicable route.

“*Third*,—That the Baltimore and Ohio railroad company, should agree to guarantee the payment out of the *profits* of the work, of six per cent. to the state, on the sum paid under the act—the state’s income on the three millions never to exceed six per cent. ; any surplus to be divided among the other stockholders.

“*All these stipulations were complied with*, and the treasurer, in behalf of the state *subscribed*, on the books of the company, for three millions of dollars of its capital stock.

“Before any part of the subscription thus made, *could be paid*, it was necessary,

“*First*,—That the six per cent. currency stock, authorized to be issued, should be sold for a premium of not less than 20 per cent. ; and every sale was to enure to the benefit of all the companies named in the act, who had given the proper notice, and otherwise entitled themselves to receive instalments.

“*Second*,—That six months notice should be given of the time at which an instalment would be required to be paid.

“ *Third*,—That a majority of the directors appointed on behalf of the state, should certify to the treasurer in writing, supported by the oath or affirmation of a majority of said directors, that they sincerely believed in their certificate and statement that with the subscription authorized by the act, and the subscription of Baltimore—or, independent of any subscription by any other public authority than the Cities of Baltimore, Pittsburg and Wheeling, and exclusive of any loan or interest, the railroad company, in their opinion, would have funds sufficient secured to it, exclusive of all future profits and debts, due by the company, to complete the said railroad from the Ohio river, by way of, and through Cumberland, Hagerstown and Boonsborough, to its track near Harper’s Ferry—and the act made it the duty of the company to locate the road so as to pass through these places, under the penalty of forfeiting one million of dollars, to the state of Maryland for the use of Washington county.

“ *Fourth*,—That there should be an estimate or estimates of one or more skilful and competent engineers, made out after a *particular and minute survey* of the route of said road by him or them, and verified by his or their affidavit, shewing that the whole cost of the work would not be greater than the amount of funds, the directors on the part of the state shall certify to have been secured by said company, and applicable to the construction of said road.

“ *Fifth*,—That but *one million* of the subscription should be called for in any one year.

“ *Sixth*,—That no instalment on any of the stock of three millions of dollars should be paid by the treasurer, until *after* an equal proportional payment should have been actually paid by the other stockholders on their shares of the capital stock of the company.

“ These *six stipulations* are those which I understand to be referred to by the resolutions of the board ; and I proceed to enquire, how far the company has been relieved from them by its own acts, or by subsequent legislation.

“ The subsequent legislation is accurately referred to in the resolution, and consists of the acts of December session 1837, ch. 314, and December session 1838, chapter 386, and the resolutions of December session 1837, chs. 26 and 68. The resolutions of December session 1837, have no immediate bearing on the subject.—No. 26 refers to the contract with the commissioners, under which the company became the purchasers of three millions of dollars of the stock created by the act of 1835, ch. 395, and corroborated that contract.—And No. 68 has reference to an advance to the Chesapeake and Ohio canal company, of two and a half millions of dollars in the six per cent. currency bonds.

“ When the act of 1837, ch. 314, was passed, the ‘particular and minute survey’ required to be made by the act of 1835, ch. 395, had not been completed, and the amount that might be required to con-

struct the road 'from the Ohio river by way of and through Cumberland, Hagerstown and Boonsborough, to the track near Harper's Ferry, was not known. It would seem to have been apprehended, however, that this amount might exceed any sum that could be obtained from the only sources that the act permitted to be available for that purpose—that is, the state of Maryland and the cities of Baltimore, Pittsburg and Wheeling, (the latter of which had not yet made its subscription of one million of dollars) and accordingly, at the December session of 1837, an application was made to the legislature to allow the company to estimate upon *any* practicable route, and to include in their calculation of funds to complete the road, *subscriptions or loans* obtained from *any sources whatever*. The legislature granted the application; but they coupled the following conditions with the grant:

“*First*,—That all monies which should be paid to the company under the state's subscription of \$ 3,000,000, made in pursuance of the act of 1835, ch. 395, should be applied to the construction of the road *from Cumberland westward* towards the Ohio river, and that the company should, within three months after the payment of the first instalment by the state, *commence the construction* of said road *at or near the town of Cumberland* in Alleghany county, *and progress westwardly* to its completion on the Ohio river, as rapidly as practicable.

“*Second*,—That the company should not make application at any time thereafter for any additional subscription, on behalf of the state of Maryland, towards the completion of said road to the waters of the Ohio!!!

“*Third*,—That said company should be confined to the southern or Potomac route, through Maryland, in their progress westward from the town of Cumberland—provided that no great additional distance or cost should be found in the pursuing of said route over the distance and cost on any other route.

“*Fourth*,—That no part of the state's subscription of three million of dollars should be paid to the company, until it had accepted the provisions of this act.

“In order to guard against any inference to the contrary, growing out of the terms of the act, it was provided, that the one million penalty should remain in full force and effect.

“The conditions here enumerated, were suggested for the first time by the act of 1837. Under the original charter, and under the act of 1835, ch. 395, the right of choice of routes, and the right to appropriate the company's funds in the construction of the road, were unrestricted—and the legislature rather countenanced than discouraged the right and probability of further applications for assistance.

“The act of 1837, however, depended for its effect upon its acceptance by the stockholders. Not only was this acceptance necessary to secure payment of the subscription, as was especially provided; but modifying, as it did, the charter, the act was wholly inoperative until the company in general meeting of the stockholders assented to its provisions. *This they have never done*: and the right of the company

to choose its route, *and to appropriate the state's subscription wherever it thinks proper*, is as perfect as though the act of 1837, had never been passed.

“Soon after the legislature of 1837 adjourned, which was in the spring of 1838, ‘the particular and minute surveys of the road were completed so far as to shew that, by estimating for a plate rail and a single track, and with the subscription of one million of dollars, which had been by this time made by Wheeling, the funds available under the act of 1835, chap. 395, *would be sufficient* for the construction of a road from the Ohio river to Harper’s Ferry, by way of Hagerstown, Boonsborough and Cumberland—and, accordingly, the certificates of the state directors and the engineers, verified by the required affidavits, were made; and the third and fourth of the stipulations above referred to were complied with. This was announced to the general meeting of the stockholders, called and adjourned from time to time, to consider the acts of Virginia and Maryland—and the directors will recollect, that at the last of these meetings, held in the Law buildings, the law of Virginia was accepted—and *the law of Maryland* of December session 1837, ch. 314—being that in question—*was laid on the table*, and no action has since been had on it.

“But while the third and fourth stipulations of the act of 1835, ch. 395, were thus complied with, the first, second, fifth and sixth relating to the 20 per cent. premium—the six months notice—the payment of but one million per annum—and the payments *pari passu* with other stockholders remained uncomplied with, and still effectually prevented *the use* of the state’s subscription.

“To obviate the necessity of complying with these stipulations, application was made to the legislature at its late session, and the law, fresh, no doubt, in the minds of the board, was passed, placing the sterling five per cent. bonds of the state at once in the hands of the railroad company for the entire subscription, dispensing thereby with six months notice, and without limit as to the price at which the bonds were to be sold, and without restriction as to the amount to be paid in a given period. The only conditions annexed to this law were, that the company should release its contract with the commissioners, and mortgage its property to secure the payment of the interest for three years, or leave an amount of bonds in the treasurer’s hands for that purpose. The release has been executed, and the mortgage has been prepared, and is, perhaps, executed also.

“Thus, all the stipulations of the act of 1835, chap. 395, have either been complied with by the company, or obviated by the legislation of 1838, and the bonds of the state are now, or soon will be, in the company’s hands, to be applied *whenever* they can be made available, and *wherever* the company deems best, and the law of 1837, chap. 314, *remains a dead letter on the statute book*.

“Connected with the subject, though not immediately referred to in the resolutions of the board, is the situation of the penalty of one million of dollars for the use of Washington county. Under the act of 1835, chap. 395, this might have been *retained* out of the three millions subscription; for all the payments on this subscription were

to be made under that act, by the treasurer, into whose hands the proceeds of the six per cent. currency bonds were to be paid; *now*, the the entire fund being placed in the company's hands, there can be no such *retainer*; but, should the state desire to enforce the penalty, it must do so by *suing* the company—in which it will then be one of the largest stockholders—sue it, too, *for the benefit of one county*, without one moral or equitable consideration to sustain the suit, *and at the expense of all the other counties of the state*—a result which can scarcely be anticipated; especially when, by placing the entire subscription in the company's possession at a time when the adoption of the Virginia route was well known, without any other reservation than the lien for the payment of the interest already mentioned, the state may be said, under the circumstances, to have assented to the abandonment of the northern for the southern shore of the Potomac. Admitting, therefore, that the million penalty is still unrepealed in terms, I cannot bring myself to believe that there is the slightest probability of an attempt ever being made to enforce it.

“I have the honour to be,

“Most respectfully,

“(Signed,)

“JNO. H. B. LATROBE,
“*Counsel B. & O. R. R. Co.*

“*June 27, 1839.*”

Have I not made good my first assertion, that the payment of the Maryland subscription had a direct reference to the certificate on which the memorial of Wheeling alleges that payment was based? I have, and defy successful contradiction. I have just as clearly demonstrated my second assertion, that the bonds of that state were given in payment of the subscription of that state upon the performance by the company, of that condition of the law of 1836, which related to the subscription of Wheeling.

To establish my third assertion, that in this certificate so frequently referred to, Wheeling is treated, and actually and necessarily contemplated as a terminus of this road, I need only refer to the face of the certificate itself. From this examination it will appear, as has been expressly admitted by Mr. M'Lane, that the subscription of Wheeling of one million of dollars was included in the amount of funds, which these directors swore was sufficient to make the road from the Ohio river to Harper's Ferry. These directors knew the terms and conditions upon which that subscription could be rendered available, and that amongst these, the most important and essential, was the terminus at Wheeling. Is it reasonable therefore, to argue from this state of the case, that the very fact which could alone render this essential part of their funds available, that is, the terminus at Wheeling, was excluded from that certificate? Assuredly not, for by withdrawing the terminus from Wheeling, and the subscription being thus lost, they would not have been able to make the certificate itself. It is very true that

certificate follows literally the condition in the law of 1836 of Maryland, under which it was filed, and covers the cost of the road to Pittsburg only. But the reason for this is sufficiently disclosed in the report of Messrs. Knight and Latrobe, referred to by Mr. M'Lane. I give it in their own words :

“ ‘The act of assembly does not indicate any particular point on the Ohio river as a terminus of the road, and the present report may, therefore be based upon a route ending at the point on that river which approaches the nearest to Harper's Ferry, and to which the road may be carried at the least expense. This point is to be found at the City of *Pittsburg*, situated at the confluence of the two rivers forming the Ohio. And as this terminus comes within the obvious and natural meaning of the terms employed in the act, it is here adopted, and the rather as the incorporation of the company by Pennsylvania, through whose territory the surveys have shewn the necessity that the route should pass on its way to the Ohio, is conditional upon the making of that city one of the terminations of the road.

“ ‘The route estimated therefore, will be the route from Pittsburg on the Ohio river, by way of and through Cumberland, Hagerstown and Boonsborough to its present track near to Harper's Ferry.’ ”

For the same reason that report bases their estimate of the cost of this road, upon the use of the plate rail ; and that too after the company had during the preceding March, informed the legislature of Virginia they intended to use the heavy edge rail of 50 lbs. to the yard, on all the road they should thereafter construct. I will read from their pamphlet before referred to, page 11 :

“ ‘The company are about to reconstruct their railway with the heavy edge rail of 50 lbs. per yard,’ &c. And again on page 11 : “And they propose to construct the entire line to Wheeling and to Pittsburg, with the heavy iron edge rail before mentioned,” &c. If this estimate had been based on the rail they designed using, and which they have ever since used, the estimate would have been upwards of \$1,500,000 more than it was, and the Wheeling subscription would not have covered it. It may also be observed here, that in estimating the cost of their road in Virginia, when applying for the Virginia subscription, they made it upon the use of the heavy edge rail.

My last assertion was, that the company did use the bonds of Maryland to procure the rails for the superstructure of their road between Harper's Ferry and Cumberland. For the proof of this, I will read the following extract from the 15th annual report of Mr. President M'Lane :

“ ‘Contracts for the iron rails for the entire road have been entered into in London at the low rate of £ 8.5 per ton ; and upon terms which it is believed will enable the company to make payments from the sale of the state bonds in the hands of the Messrs. Baring, and without a sacrifice. Eight hundred tons of the rails have already been delivered in Baltimore ; more shipments are now on their way, and the delivery

of the whole may be expected in season for the earliest completion of the road."

In the 16th annual report Mr. M'Lane says :

"The contract made by Messrs. Baring, Brothers & Co. for the iron rails, comprehended the entire quantity sufficient to finish the work to *Cumberland*, the price of which that house consented to advance, with the right to be reimbursed from the sale of the state bonds deposited with them by the company. In the course of the last winter, however, it became obvious that, in consequence of the failure by the *state* to provide for the interest upon its other engagements, the bonds belonging to this company could not be relied upon, unless at a ruinous sacrifice, as the means of reimbursing their advances ; and the Messrs. Baring declined delivering any more iron than had already been sent forward, unless the means of payment could in some other manner be provided for.

"The serious injury necessarily consequent upon a suspension of the work at the point which it had then reached, and the heavy loss which would have attended a sacrifice of the bonds in payment of the iron already furnished, made it no less the duty than the interest of the company to provide another and more satisfactory mode of payment. An arrangement has been accordingly concluded, by which, in consideration of an engagement by the company to pay for the whole quantity of iron in annual instalments of \$ 50,000, and interest semi-annually, the Messrs. Baring agreed to execute the contract in full, and also to surrender the option of selling the state bonds below the company's limits, so long as the annual payments should be punctually made. By this arrangement the company have not only obtained a credit of seven years for the cost of the iron, but by their ability punctually to comply with their engagements, have preserved the bonds of the state from any sacrifice, and they may now be reserved without risk as a fund for future operations. Under this arrangement the remainder of the iron sufficient to finish the road to *Cumberland* has actually arrived, and has been transported to the line of the road."

In connection with this point, I must also refer you to the annual message of William Grason, Esq. governor of Maryland, to the legislature of that state, at the December session 1839, the communication of Mr. President M'Lane, to the chairman of the committee on internal improvements of the house of delegates of that state, in answer to a part of that message, and the special message of governor Grason to the legislature of that state during the same session, which reviews the communication of Mr. M'Lane. These documents clearly establish the fact alleged in the memorial of the City of Wheeling, that the bonds of Maryland for the \$ 3,000,000 subscription, did enable the Baltimore and Ohio railroad company to procure, under their contract with the London bankers, the rails for their road from Harper's Ferry to Cumberland.

I shall now beg leave to read to you a document to which I ask your especial attention. I do not think any comment necessary. It

effectually settles, for the present at least, the question of impracticability. Upon the publication of the abstract of the chief engineer of the Baltimore and Ohio railroad company, which was read to you, I addressed Mr. Knight the following note :

“ RICHMOND, January 9, 1845.

“ *J. Knight, Esq.*

“ DEAR SIR,

“ I desire to call your attention to the ‘ Abstract of the report of the chief engineer to the president of the Baltimore and Ohio railroad company, upon the route to the City of Wheeling, through Virginia and avoiding Pennsylvania: and of the other routes with which it may be compared.’ Will you be kind enough to furnish me with your remarks thereon, with such estimates, &c. as you may deem material and now within your power.

“ I desire to use your reply before the committee on roads and internal navigation of the house of delegates of Virginia.

“ Yours truly,

“ JAMES S. WHEAT.”

I will now read his answer :

“ RICHMOND, Va., January 11th, 1845.

“ *James S. Wheat, Esquire.*

“ In reply to yours of the 9th instant, I beg leave to premise that to be called upon in the absence of adequate data, to furnish any estimates upon the routes by which the Baltimore and Ohio railroad, passing south of Pennsylvania, may strike the Ohio, within the limits described in the memorial of the company presented to the present legislature of Virginia, was altogether unexpected. It is well known, that with the single exception of the route reconnoitred last summer, from Wheeling to the head of Buffaloe creek, 52 miles, and which was extended by Benjamin H. Latrobe, chief engineer, to the mouth of Piles’ fork of that stream, 9½ miles further, I have had no occasion at any time to examine, nor have I examined, any of those routes, for the reasons assigned in my communication of the 7th inst. in reply to yours of the 3d.

“ The route extending from the Fishing creek route at the mouth of Piles’ fork to Wheeling, examined as aforesaid, and the fine adaptation of the ground on Piles’ fork, for the work proposed, having been certified to me by that officer soon after he had examined it, I was enabled to form an approximate estimate for myself; but as such estimates, based upon mere reconnoissances, and without a single measurement by instruments, must necessarily be vague, and, at the best, very uncertain, I did not suppose that any occasion would arise for submitting an estimate under such circumstances.

"In obedience to your request, however, I offer the following rough, but approximate estimate:

"Estimate upon the Route from Buffaloe Creek at the mouth of Piles' Fork, up the latter, to Glover's Low Gap; thence to the mouth of Wolf Run on Wheeling Creek, and by the latter stream to the City of Wheeling.

" 1 $\frac{1}{6}$ miles, = 6160 feet, lineal, of tunnelling, at \$73 40		
per foot, =	- - - - -	452,144
" 10 miles of heavy graduation, culverts included, at		
\$25,000 per mile, =	- - - - -	250,000
" 33 $\frac{1}{3}$ miles of very cheap graduation, masonry and		
bridging included, at \$6,000 per mile, =	- - - - -	200,000
" 17 miles on Wheeling creek, per estimate of 1838,		
graduation, masonry and bridging,	- - - - -	223,763
" Water stations \$300 per mile, right of way \$500 per		
mile,	- - - - -	49,200
" Depots,	- - - - -	30,000
" Single track of railway, at p. ml. \$9,000	} for 61 $\frac{1}{2}$ mls. =	590,400
" Add $\frac{1}{15}$ for sidings,		
	600	
	<hr/> 9,600	
" Amount with a single track,	- - - - -	1,795,507
" Second track, at \$8,400 per mile,	- - - - -	516,600
" Amount with two tracks,	- - - - -	<u>\$2,312,107</u>

"The foregoing estimate is predicated upon the following facts and considerations:

"The length of the tunnels first assigned in the reconnoissance, and given in the tabular statement of the report, is a total of 4845 feet; that is to say, 1005 feet at Simpson's, in the ridge at the head of Wolf run, and dividing Wheeling creek from Grave creek; 1200 feet at Wel-ling's, in the ridge dividing the slopes of Grave creek and Fish creek; and 2640 feet in the ridge between the North and South forks of Fish creek. It was not deemed indispensable that a tunnel should be projected at Glover's low gap, between Church's fork of Fish creek and Piles' fork of Buffaloe, and a cut 60 feet in extreme depth, and 400 feet in total length was here projected.

"In the above arrangement, grades of 60 feet to the mile were allowed near these several summits, excepting in the forks of Fish creek, where grades of 92 feet to the mile were introduced for 1 $\frac{1}{2}$ mile on the south, and 1 $\frac{1}{4}$ mile on the north side of the proposed tunnel; which latter was followed by a descent of 64 feet to the mile in a further distance of 1 $\frac{3}{4}$ mile to the level of the bank of the North fork of Fish creek at John Bell's.

"After passing over the route, however, it seemed practicable to reduce the grades to an inclination not exceeding 40 feet to the mile, in

all parts except in the forks of Fish creek. Hence it was recommended to lower the tunnels at Simpson's and at Welling's, and to lengthen them accordingly ; also to introduce a short tunnel at Glover's gap.

"In this plan, the length of tunnelling was increased to 6160 feet ; and further examinations were recommended in the event of a survey, in order to ascertain the fact whether the tunnel projected in the ridge dividing the forks of Fish creek could not be lowered without injuriously adding to its cost, and the grade be lessened.

"At present, however, I shall not estimate for any supposed change in crossing this ridge.

"The locomotives with the passenger cars will be able to ascend this ridge, on the grade proposed, without aid from assistant engines, whilst the freight trains, being loaded to a grade of 40 feet, will require assistance to pass this ridge, and one assistant locomotive will be competent to aid many trains per day, as now at Parr's ridge.

"The cost of the tunnel of 1207 feet in length at the Doe gulley, on the Baltimore and Ohio railroad, below Cumberland, including all materials and excavations, centreing, arching, backing, heading, and excavating and walling of shafts, was about \$81 55 per running foot. Considering that labour, provisions and provender are cheaper now than then, and that west of the mountains these items will be yet more abundant and cheap than below Cumberland, at the same time that I believe the excavations will be as easy or easier made than at the Doe gulley, I shall estimate the cost to be 10 per cent. less, or at \$73 40 per foot in length of the tunnel, the rate here mentioned being considered an average one. It is true that a tunnel half a mile long may cost something more per foot run than a tunnel of a quarter of a mile ; but it must be recollected that one of the tunnels in question is very short, and not requiring a vertical shaft. Upon the whole then, and reflecting that this estimate contemplates the arching to be of bricks at about \$12 50 per thousand for making and laying, and that these can in all probability be made in the immediate vicinity of their use, the estimate is considered a very ample one.

"The estimate next includes the more expensive parts of the line near the tunnels ; in passing across the ridge in the forks of Fish creek ; along the slopes in the vicinity of these two streams ; and upon the more crooked portions of Church's fork. These make about 10 miles ; and the round and large sum of \$25,000 per mile, is assumed ; sufficient, doubtless, even should two short tunnels on Church's fork be made ; which, however, was not deemed indispensable.

"The residue of the line between Buffaloe and Wheeling creeks, in detached parts, amounting to $33\frac{1}{3}$ miles, occupying ravines that are, in general, remarkably straight and even, will be of very cheap construction, and a sufficient allowance for all the works necessary to form the road for the reception of the rails, in these parts of the line, is believed to have been made.

"We have now to add for the graduation, masonry and bridging upon the 17 miles along Wheeling creek from the mouth of Wolf run to the City of Wheeling. This portion of the line, still in Virginia, was survey-

ed as part of the line projected through Pennsylvania, from Cumberland in Maryland, and notwithstanding the estimates of 1838 are probably too high for the present time, we have nevertheless taken the amount then estimated for these items.

“The water stations and their appendages are taken at what is believed to have been their cost east of Cumberland; and the right of way, in the region under consideration, will probably not be more, but may be less, on an average, than is estimated for that item.

“The cost of depots will depend much upon the style of the buildings and other circumstances unnecessary now to particularize. The sum allowed may probably be sufficient, under economical arrangements.

“We come, lastly, to a consideration of the cost of the track of railway. The cost of the single track, between Harper’s Ferry and Cumberland, inclusive of all materials and workmanship, was, if I recollect aright, about \$10,000 per mile. But, upon the line now under estimation, from influences already adverted to, and the abundance of timber and stone materials along the route, I am not disposed to estimate the track higher than at \$9000 per mile, with an allowance of \$600 per mile for sidings.

“With the present improved locomotive machinery, railway, and management, an enormous amount of transit can be performed upon a single track; so much indeed as to render probable the postponement for a long time the laying down of a second track. In fact, the investments in the work will become very profitable, long before the first track shall have been worked to its ultimate capacity. It seems scarcely necessary, therefore, now to include in the estimates the cost of a second track. If that is done, however, inasmuch as it will cost less than the first, \$8400 per mile is assumed as the cost.

“Comparisons of the routes.

“Whilst the distance from the mouth of Piles’ fork to Wheeling upon the route now estimated, is set down at $61\frac{1}{2}$ miles; that from the same point on Buffalo creek to the Ohio at the mouth of Fishing creek, as reconnoitred by B. H. Latrobe, is only $42\frac{3}{4}$ miles; difference in favour of the latter, $18\frac{1}{2}$ miles.

“Not having the advantage of a personal acquaintance with any part of the Fishing creek route lying westward of the ridge dividing the drains of Youghiogheny from those of the Cheat, I shall not pretend, upon this occasion, to offer any detailed estimates of cost in relation to it.

“The estimate of the cost of construction from the mouth of Piles’ fork on Buffalo creek, to the mouth of Fishing creek, as made by the chief engineer, and stated in the ‘Abstract,’ is \$1,585,125, with a double track, &c.; and deducting my estimate of \$8400 per mile for the second track, the cost, with a single track, is inferred to be \$1,226,025.

“It will be seen, therefore, that my estimate of the cost of construction from the common point of diverging on Buffalo creek, to the City of Wheeling, is, with a single track, greater than that upon the

route to the Ohio at Fishing creek, by \$569,482, and with a double track, by \$726,982.

“The repairs will perhaps be nearly proportional to the distances, whilst the cost of transit will have a ratio compounded of distances and heights. As regards the influence of heights upon the cost of transit by steam locomotion, it is chiefly confined to the fuel, which is only a single item amongst several that compose the entire cost, and hence, where the ascent is not sufficient to require the aid of an assistant engine, no very appreciable augmentation in the cost will take place. The wear and tear of road and machinery, the cost of conductors, enginemen and attendants, and all general expenses are the same; whilst although the fire is urged and the fuel rapidly consumed in passing up the ascents, yet on the descents the draft ceases, the fire is not excited, the evaporation is retarded, and the steam is husbanded for parts of the road requiring its power.

“Taking into view these circumstances, and without entering into detail in a matter productive of no ultimate decisive result, seeing that the choice of routes must depend upon more exact comparisons than the data we now have will enable us to make, and peradventure also upon commercial or other views than are dependent upon such estimates.

“It is probable, nevertheless, that with a single track, which for a long period may suffice, the balance of actual and equivalent capital against the Virginia route to Wheeling, in this comparison, may reach \$750,000. To compensate for which the route would terminate at a city already established with all her streets, buildings, wharves, mines, roads, manufacturing and commercial houses and connections, together with all the advantages to depend upon the undoubted facility there presented of carrying a similar central work to the westward, with branches to the left and right.

“The matter in hand is not however as to which of these routes is the cheapest or the best; for no such question is now involved, nor is any such decision now to be made. The real question at issue, is whether this route to Wheeling around the southwestern angle of Pennsylvania, is practicable or not. I have pronounced my opinion in the affirmative, and would respectfully say, that I see nothing, even in the estimates offered in the “Abstract” before me to controvert it.

“The chief engineer’s estimate, of the cost of construction &c., including two tracks, for the $61\frac{1}{2}$ miles in question, is \$2,763,707, equal to \$44,938 per mile. Now, great as this appears, it is nevertheless within what would be the average expenditure between Harper’s Ferry and Cumberland, if two tracks were there laid down. The distance being 97 miles; and the cost with a single track, as stated in the company’s memorial, being \$3,600,000, the average per mile is \$37,113; adding my present estimate per mile for the second track, \$8400, the result is \$45,513 per mile, from Harper’s Ferry to Cumberland. Taking the expenditure upon this part of the railroad as the guide therefore, there can be no question of the entire practicability of this route to Wheeling.

“The estimate of the chief engineer for the total ‘cost of construction with double track, right of way, water stations and depots,’ upon the route from Cumberland to Buffaloe creek, and thence to Wheeling, presented in the ‘Abstract,’ is at the rate of \$ 40,726 per mile; whilst his estimate of the total cost of similar items on the route from Cumberland to Buffaloe, and thence to the Ohio at the mouth of Fishing creek, amounts to \$ 38,498 per mile. A difference of itself too small to determine the question of practicability, or of impracticability: and the choice would be made from views of expediency, or from a comparison of merits, all things relating to the two routes being considered.

“It is intimated that to decide a route to be ‘practicable,’ or ‘feasible,’ ‘its cost must be compared with *the means of those who have to make it.*’ This, it is true, is a proper subject of consideration for the company previous to entering upon the prolongation of their road upon any, even the cheapest, route; since if their means were inadequate, all routes would be, to them, impracticable, having reference only to their means.

“At the same time, a route from Cumberland to the Ohio, whose construction and working should not exceed a cost upon which it could be reasonably shewn that an adequate return in trade, intercourse, and dividends would be received by its proprietors, or upon which the cost of construction should not much, if any, exceed the rate already judiciously expended; in either case, such route, I think, must be deemed practicable, in the general, or usually accepted sense of the term, whatever the means of the company *to prolong the road, might be at any given time.*

“The chief engineer next compares the route to Wheeling, passing from Cumberland through Pennsylvania by Brownsville, with that extending to Wheeling around the corner of Pennsylvania; and finds the Pennsylvania route the shorter, by $28\frac{3}{4}$ miles, with a less rise and fall of 1499 feet, and a less cost of construction by \$ 1,577,606; and if the estimate which I have offered from Buffaloe to Wheeling, be substituted, still, the difference in the cost of construction would be \$ 1,126,006. He adds, that taking into view the cost of working the road upon these routes, the balance in favour of that through Pennsylvania, would be augmented to a sum greater than two millions of dollars.

“A direct comparison of the Pennsylvania route to Wheeling, with that to the mouth of Fishing creek, is not presented in the ‘Abstract,’ but from the data there furnished, it would appear that the Pennsylvania route is the shortest by 10 miles, with the least rise and fall by 442 feet, and the least costly to construct by \$ 399,024.

“And allowing for the saving in the cost of graduation, to result from adopting the route by the immediate ravine of Jennings’ run and Albright’s summit, corrected by that to be added on account of the pass at Day’s summit between Ten mile and Wheeling creeks, the above difference will, in fact, be increased to \$ 625,137; and should the repairs and working of the road be taken into the account, the ba-

lance against the route to the Ohio at Fishing creek, and in favour of Wheeling, would doubtless approximate to a million of dollars.

“These estimates, therefore, fully vindicate all previous determinations on the part of the company and its engineers in favour of the route from Cumberland to Wheeling, through Pennsylvania.

“Allow me here to say, in explanation, that the rise and fall from Cumberland to Wheeling, avoiding Pennsylvania, and likewise to the mouth of Fishing creek, are something greater in my communication to you, of the 7th instant, than in the ‘Abstract’ now before me. Of course the latter must be deemed more accurate, being, doubtless, the results of a careful reconnoissance by B. H. Latrobe, chief engineer; and as regards the rise and fall given by Lieut. Trimble, from Cumberland to the mouth of the Little Kanawha, that stated in my aforesaid communication, was upon his line of 243 miles in length; whereas upon his shorter line of $223\frac{1}{4}$ miles, the rise and fall is nearly 900 feet greater.

“The ‘Abstract’ does not indeed enter upon any comparison between either of the routes mentioned, and that to terminate at Parkersburg. At the same time, from the greater length and greater rise and fall, a much greater cost of construction and working must be inferred upon the latter, than upon either of the routes terminating at Wheeling.

“Very respectfully,

“J. KNIGHT.”

No member of this committee can regret more than I do, that circumstances apparent to all, and which I have endeavoured to explain, have compelled me to occupy so much of their time, in examining so minutely many points which are not necessarily involved in the decision of the important question submitted to you. It is with great pleasure that I now assure you that I am drawing rapidly to a conclusion.

After endeavouring to answer some of the charges preferred against the City of Wheeling by our opponents, and thus place her cause before you, freed from the prejudice so naturally excited by these charges, I proceeded to discuss the claim of her memorial, and the denial of that claim as brought forward by the railroad company. In the course of this discussion I endeavoured to establish, that, from July 1829 down to the beginning of 1843, the acts of that company had recognized the City of Wheeling as the terminus of their road on the Ohio river in this state; that in the legislation of Maryland this same fact had been distinctly recognized; that upon the application of the company, and upon their own terms, the legislature of our own state had by solemn act established the City of Wheeling as such terminus; that in obedience to the requirement of the law of 1838, the City of Wheeling had subscribed for \$1,000,000 of the stock of that company, upon the terms dictated by the company itself; that in obtaining that subscription, the company were enabled, by the adoption of the Virginia law of 1838, to secure the Virginia route, and thus

gain, according to Mr. M'Lane's own shewing in his twelfth annual report, in actual and equivalent capital, nearly \$ 5,000,000 ; that by the aid of this same subscription the company were enabled to realize the payment of the Maryland subscription of \$ 3,000,000, and all the advantages this latter subscription conferred upon them. Under such circumstances this company propose to desert the City of Wheeling—it asks the legislature of our own commonwealth to authorize and justify this desertion. And upon what pretence? At one time, an absolute impracticability of reaching us, is assumed without qualification ; then a comparative impracticability with assurances of a further hearing—at one time we are threatened with an unconditional abandonment under any circumstances ; and at another with the combined indignation of the entire northwest forever hereafter, as a just and proper punishment for our selfish policy.

The City of Wheeling has been forced here by the natural and legitimate desire to save her people from destruction. Convinced of the justice of her claim, and the integrity of her purpose in acquiring that claim, she appeals to you for protection. And how have our opponents received that appeal? Acknowledging nothing but what could not be successfully controverted, they have compelled us to fight over every inch of ground—to argue every proposition which did not appear prominently in the very face of the record. By such protracted discussion they would fasten upon us the odium of tediousness, and obscure our claim by the prolixity of minute investigation.

And what has been the feeling manifested towards us by many of those who oppose our claim? We are denounced as selfish,—as utterly regardless of all interests save our own,—as supporting a pretended title by distorting and misrepresenting public and notorious transactions,—as practising a fraud upon the generous favour of the legislature by false representations of our past and present condition and the causes which have influenced it : our city is a mongrel and her people the odds and ends thrown off by worthier communities. Is this to be our answer? Can such sentiments receive the stamp of approbation from a Virginia assembly? The past history of our commonwealth, and a conviction of the rank injustice of these imputations, satisfy us that in this we have naught to fear.

But what is the City of Wheeling? Let our opponents now, but former friends, answer for us. She *was* Virginia's thriving western City of Wheeling. By position and commercial connections, she was destined to become a principal seat of western trade, and could not fail under wise encouragement, to grow into great importance in the domestic policy of this state. Her means for the accomplishment of this end, are manifestly in many most important particulars, superior to those of Pittsburg ; and yet Pittsburg by the energetic and sagacious policy of Pennsylvania has already been elevated into the rank of a great western metropolis, and will long continue to be fostered, as one of the most valuable of her possessions. * * * * * Pittsburg and Wheeling are in every sense, rivals in trade, urged forward to their utmost endeavour by an eager spirit of emulation. The first has been pushed onward in her career by the stupendous efforts of a powerful

state, which has contributed to open every resource to her enjoyment ; but Wheeling more advantageously seated, and enjoying by nature many elements of superior success over her competitor, has yet to receive the aid of her own state, which is now presented with a conspicuous occasion to signalize her justice and beneficence in vindicating and sustaining her city of the west.

And who are the people of Wheeling ? The faithful and liege citizens of the commonwealth. Go among them and scan their origin and character. You will find the descendants of those who won the homes of their children from the savage—who by their celebrated acts of hardy daring, their privations and sufferings, established themselves in this outpost of the Old Dominion. You will find the enterprising and industrious emigrant from the lowlands of Virginia, from the valley, and from her western mountains. You will find also a numerous band from the sister states of our confederacy, and from foreign lands, who have there placed themselves under Virginia's broad shield for protection. And in all—through all—in the very form and pressure of society, you will find stamped Virginia laws and institutions. Placed on the northernmost verge of this great commonwealth, they have for a quarter of a century maintained an unaided struggle with their more favoured rivals for a fair and just participation in the trade and commerce of the country. They never spared their own efforts to call on Hercules. The advantages conferred upon them by nature, they have industriously used, and the assistance they have received from their only public improvement, they have not slighted. With the aid of that great work, the National road, they flourished in all their pursuits. Ten years after its completion, the Baltimore and Ohio railroad company, in choosing their city for the terminus of its road, gave a new impulse to their onward career. They saw a successful career open to their energy and enterprise, and eagerly sprang forward in the full confidence of reasonable hope. The completion of the Pennsylvania works which diverted a large portion of their trade and commerce to Pittsburg was the first blow they received. It staggered, but did not prostrate them. Manfully they struggled to retain their position. They saw in the lapse of a few years, the winning the counterpoise which should restore the balance in their favour. The year 1838 brought them as they believed, the fruition of their hopes. For their patient endurance of the ills they could neither avert nor avoid, they had now almost in their grasp the rich reward. New efforts were demanded of them by those who seemed to control their destiny. They yielded to the demand, with the honest determination of redeeming their engagements, and the most implicit confidence in the good faith of those with whom they contracted them. Throughout all this career—through good and ill, they have been the obedient citizens of this commonwealth. In their cheerful allegiance to her laws and institutions, they have vied with her most cherished sons. Such are the people of Wheeling ! And most lamentable is it, that with a magnanimity worthy of note, some of our opponents have made our misfortunes the excuse for insult, and our weakness the occasion for outrage.

In entering upon this contest with the Baltimore and Ohio railroad company, they well knew the power of their adversary. They had seen in the legislative history of Maryland ample evidences of its controlling influence in that state. Great as they knew the odds to be, they had not even suspected the combinations that company had formed, successfully to overthrow all opposition. But, armed as they are with right and justice, they falter not. They fear not even when they hear the magnificent promises of the incalculable benefits to be conferred upon the different sections of the Old Dominion by this mammoth company, if she will consent to receive them. They anticipate her reply :

"Timeo Danaos et dona ferentes."

I fear the Greeks, even when they offer presents.

I cannot conclude without tendering to this committee my heartiest acknowledgments for the kind attention with which they have heard me. It is the more grateful to my feelings, from the contrast with the painful eagerness of some of our opponents to give the finishing blow to the City of Wheeling. This eagerness to break the bonds subsisting between the city and this company, should they prove successful, will only be exceeded by their haste to form the new alliance. Truly would they have the funeral meats to furnish forth the marriage feast.

Gentlemen, I have done.

The first of these is the fact that the number of persons who are
employed in the various branches of the service is not
uniformly distributed. In some branches the number is large
and in others it is small. This is due to the fact that the
service is not a homogeneous one. It is composed of many
different branches, each of which has its own special
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